

1 Ng - People - Cross

847

2 A Yes.

3 Q Do you know what time you got to the second
4 location?

5 A Approximately about 6:30, around that time,
6 6:20.

7 Q And that was the home of Emily Liu?

8 A Yes, correct. That's her family's apartment.

9 Q Beside for Miss Liu?

10 A Yes.

11 Q Were you saying something?

12 A No, just in my mouth --

13 Q Besides for Miss Liu was anyone else there
14 who were police officers?

15 A I don't understand your question.

16 Q Well, Miss Liu was there?

17 A Yes.

18 Q Anyone else in the house?

19 A Anyone in the house?

20 Q In the apartment whatever.

21 A You talking about police or?

22 Q Were there any civilians?

23 A Well, they have relatives there, yes.

24 Q Were there any police there?

25 A Yes, other detectives there, yes.

Ng - People - Cross

848

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Do you know the names of any of the
detectives who were there?

A Yes, Detective Tom Ernest.

Q Were there any detectives there at that time
when you got there who spoke Chinese?

A Yes.

Q Who was that?

A The detective from 5th Squad, Detective Frank
Lee (phonetic).

Q Was Mr. Liu Guo Bang at that apartment when
you were there?

A Mr. Liu -- not that I remember.

Q And how long did you stay at that apartment?

A Well, I was staying there from approximately,
like I say 6 o'clock, to pretty much early morning
around, around about 12:30, 0030 hours, like 12:30, I
could say. Approximately six hours.

Q And you left the apartment at 12:30?

A Approximately that time. I cannot remember
exactly what time.

Q Was Emily Liu at the apartment the entire
time with you?

A No.

Q Did there come a time she left?

1 Ng - People - Cross

849

2 A She left, yes.

3 Q What time was that; if you know?

4 A I could say she left around 11:00 something,
5 a little bit off 10:00 or 11:00.

6 Q You didn't go with her, did you?

7 A No.

8 Q And you remained in the apartment. Were
9 there any more phone calls after that to the apartment?

10 A Yes.

11 Q And did you pick up the phone?

12 A No, I didn't pick up phone.

13 Q Did any other family members pick up the
14 phone?

15 A No.

16 Q In other words, the phone just rang and then
17 they hung up?

18 A No, we didn't pick up the phone.

19 Q Well, the phone rang. After a while the
20 phone stopped ringing?

21 A Yes.

22 Q And you said from 6 o'clock to 11 o'clock
23 there were ten phone calls?

24 A I said approximately. I don't know exactly.
25 It was a lot of phone calls come in, yes.

Ng - People - Cross

850

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And at any time did you mark down what the phone calls were, you know, write down verbatim what was said?

A Yes. I just -- we do, yes, write down little bits -- talk to Detective Tom (phonetic) -- on the book, you know, the logs, telephone logs.

Q When you left at approximately 12:30 where did you go?

A I returned to the 1 PP, 1 Police Plaza, headquarters Major Case Squad office.

Q And at that time did you see my client Hai Zheng?

A Not right away.

Q Can you tell the members of the jury what time was the first time you saw Hai Zheng?

A I could say -- I cannot remember exactly what time.

Q Approximately.

A Approximately about 1:00, 1:00 a.m. in the morning, April 2, 1995.

Q At that time did you speak to him?

A Yes, I spoke to him. Yes.

Q Were other detectives around when you spoke to him?

1 Ng - People - Cross

851

2 A Excuse me?

3 Q Were other detectives around? Were other
4 detectives there?

5 A Well, I cannot remember exactly how many
6 detectives. There was a lot of people. This is major
7 operations.

8 Q Were there other detectives there when you
9 spoke to him; yes or no?

10 A Well, I only spoke to take pedigree
11 information.

12 Q Did any other detective ask you to get that
13 information?

14 A Yes, it's like -- yes.

15 Q Do you know who that detective was?

16 A Well, there was a few of them. Detective
17 Greene is one of them. Some other detectives you know.

18 Q And where was it that you spoke to him?

19 A He was in the, in the squad room, the Major
20 Cases squad room, you know, like wide open area.

21 Q Was he handcuffed?

22 A Yes.

23 Q Did you see him having anything to eat or
24 drink while you were there?

25 A No.

1 Ng - People - Cross 852

2 Q You said that you took -- the statement was
3 timed at 6:15 in the morning?

4 A Yes. When I started -- yes, I started 6:15.

5 Q That would be approximately five hours later,
6 from 1 o'clock to 6 o'clock?

7 THE COURT: Now you're a mathematician.

8 A Yes.

9 Q For the next five hours did you see my
10 client?

11 A On and off, yes.

12 Q Did you ever see him eating anything?

13 A I didn't watch him all the time. I was
14 interviewing other people, other persons.

15 Q Prior to 6:15 did you have occasion to
16 interview Liu Jin Hao?

17 A Yes.

18 Q And did you take any notes or memorandum
19 during that interview?

20 A Yes, I did.

21 Q You did?

22 A It was -- make sure same person. We talk
23 about pretty close name.

24 Q Liu Jin Hao.

25 A Yes.

1 Ng - People - Cross

853

2 Q Did you mark anything down?

3 A Yes. Yeah, I did same thing. I -- he
4 offered a statement to me. I took the statement.

5 Q Who did I just ask you if you interviewed.

6 A Excuse me?

7 Q Who did I just ask you if you interviewed?

8 A Qin.

9 Q Withdrawn.

10 MR. SCHECTER: Can the court reporter
11 read back the name of the person I asked you
12 if you interviewed.

13 THE COURT: You may do that.

14 (The court reporter read back the name,
15 Liu Jin Hao.)

16 A Okay. I'm sorry, I make mistake. I didn't
17 interview Liu Jin Hao in the morning. I make a mistake.
18 I'm sorry. That's why I make sure the same person we
19 talking about.

20 Q Did you ever speak to Liu Yan Wu that
21 morning?

22 A No.

23 Q Well, let me ask you this. Were you ever
24 told what either of those two females stated prior to
25 speaking to Hai Zheng?

Ng - People - Cross

854

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I don't understand. What is the question?

Q Did you have any conversation -- not with the two females -- but with any other detective about what they said occurred -- prior to speaking to Hai Zheng?

A No, it was just very brief. No, it was very brief. That's all.

Q Well, prior to speaking to Hai Zheng did you know what the two females said occurred?

A No, I don't. I didn't know what they, they said. Only I was informed they were sex abuse.

Q Who informed you of that?

A One of the detectives.

Q Okay. Did he inform you anything else about what they said?

A No.

Q That was just it?

A Just they were -- I was informed they were raped.

Q Do you remember which detective told you that?

A I believe it's, if I remember correctly, Detective Greene, you know and you know --

Q Did any detective ask you or tell you to speak to Hai Zheng?

1 Ng - People - Cross 854

2 A I don't understand. What is the question?

3 Q Did you have any conversation -- not with the
4 two females -- but with any other detective about what
5 they said occurred -- prior to speaking to Hai Zheng?

6 A No, it was just very brief. No, it was very
7 brief. That's all.

8 Q Well, prior to speaking to Hai Zheng did you
9 know what the two females said occurred?

10 A No, I don't. I didn't know what they, they
11 said. Only I was informed they were sex abuse.

12 Q Who informed you of that?

13 A One of the detectives.

14 Q Okay. Did he inform you anything else about
15 what they said?

16 A No.

17 Q That was just it?

18 A Just they were -- I was informed they were
19 raped.

20 Q Do you remember which detective told you
21 that?

22 A I believe it's, if I remember correctly,
23 Detective Greene, you know and you know --

24 Q Did any detective ask you or tell you to
25 speak to Hai Zheng?

Ng - People - Cross

855

1

2

A Yes.

3

Q Who was that?

4

A It was we was under the direction of the

5

supervisor. From Sergeant Hines I interviewed

6

Mr. Zheng.

7

Q Did Detective Greene tell you to interview --

8

MR. KESSLER: Objection.

9

A No.

10

THE COURT: I'm sorry?

11

THE WITNESS: It was objection.

12

MR. KESSLER: He indicated the witness

13

who told him. I objected to him specifically

14

saying, well, did this person, Detective

15

Greene --

16

THE COURT: I'm allowing it. Overruled.

17

A No, he did not, didn't tell me.

18

Q Now, when you spoke to Hai Zheng was any

19

other detective present when you spoke to him?

20

A No.

21

Q Where did you speak to him?

22

A I spoke to him -- I speak to him in the

23

interview room in the -- excuse me -- Major Case Squad's

24

office.

25

Q Was he handcuffed?

1 Ng - People - Cross

856

2 A No -- I believe I have to take off handcuffs,
3 yes.

4 Q Are you sure you took off his handcuffs?

5 A I'm sure.

6 Q Now, you said you first advised him of his
7 rights in Chinese and English?

8 A Yes.

9 Q Did you ever ask him how long he had been in
10 the United States?

11 A No.

12 Q Did you ask him where he was originally from?

13 A No, I didn't ask.

14 Q Now, when you advised him of his rights did
15 he understand them?

16 A Yes, he understand them perfectly.

17 Q He understood them perfectly?

18 A Yes.

19 Q He didn't ask you any questions about them?

20 A No. He got a chance to read it, initial it.
21 After read them in Chinese, English, I turn around, let
22 him read it, understand it. I make sure he understand
23 what he is signing for, yes.

24 Q Detective Ng, were you born in the United
25 States?

Ng - People - Cross

857

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A
Q
A
Q
A
Q
A
Q
A
Q
A
Q
A
Q
A
Q
A
Q
A
Q
A

No.
Were you born in China?
Yes, I born in China.
How old were you when you first came to the
United States?
Well, I was 16.
So did you feel -- had you gone to school in
China?
Yes, I get a -- well --
Education?
Education. Nine years over there.
In China do they have anything similar to our
Miranda warnings?
MR. KESSLER: Objection.
THE COURT: Sustained.
Now, after you advised him of his rights you
said he made a statement?
Yes.
And am I correct in saying -- did you write
down everything he told you?
Yes.
You didn't leave anything out at any time?
Except the part he said he -- except the part
he says -- I asked him a question, did you rape -- sex

1 Ng - People - Cross 858

2 intercourse with the female. He denied it, no.

3 Q Did you write that down in the statement?

4 A No, I didn't because -- except the one thing
5 I told you. He said the -- he said the person made the
6 phone call outside, you know.

7 Q Did you write that down?

8 A No, I didn't write it down.

9 Q Did you know how many people totally were
10 involved in -- withdrawn.

11 When you spoke to Liu Guo Bang did he tell you how
12 many people there were involved?

13 THE COURT: Involved in what?

14 MR. SCHECTER: Involved in this
15 incident.

16 THE COURT: At what point? Please,
17 there is no question before this witness.
18 Specify what you're talking about.

19 Q Prior to speaking to Hai Zheng, had you been
20 advised how many different people had been seen by the
21 females between March 31st and April 2nd?

22 A How many people? I'm trying to understand
23 your question. That is --

24 THE COURT: Rephrase the question.

25 Q Did any of the detectives tell you how many

Ng - People - Cross

869

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A In the statement he didn't say -- he didn't say they were raped. That's why I didn't put in the statement.

Q He never said the two females were raped; am I correct?

A He said -- I asked him, do you rape the two females? He said, no. So he didn't -- he say, no. That's why the statement not including, because does not say he rape the women.

Q You don't think that would be important to get put in the statement if you were getting his side of the story, if you ask him if the two females were raped?

MR. KESSLER: Objection.

THE COURT: Sustained.

Q When did you ask him if he had raped the two females?

A When?

Q When.

A When the verbal statement --

Q No, was that after he finished the statement? Was that at the beginning?

A Well, during -- after he told me the story in the verbally, then I asked him, do you ever rape the women? He say, no, I didn't.

1 Ng - People - Cross

870

2 Q But you never marked that down that he stated
3 that he never --

4 THE COURT: Sustained. It's been asked
5 and answered.

6 MR. KESSLER: Objection.

7 Q Was there anything else you asked him that
8 you didn't write down?

9 MR. KESSLER: Objection. Asked and
10 answered as well.

11 THE COURT: Overruled.

12 A Asked, no. He mumble himself, but he talking
13 to himself.

14 Q Well, did you ask him anything else about the
15 incident that you knew that he denied?

16 A Well, just the rape part. He denied it. He
17 denied he rape the woman. I didn't put it down. He
18 said he didn't do it, so.

19 Q Did he say anything else you didn't write
20 down in the statement?

21 A Yes.

22 Q What was that?

23 A He mumble himself. He said, I don't believe
24 the family set me up. I treat them very nice. And I
25 suppose they -- intitially charge \$15,000. Because the

Ng - People - Cross

871

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

family poor, no money. And I have been nice to them and I lower down the price to \$7,500. Keep talking to himself. I don't believe they is set me up. I too nice to them. They set me up, he mumbled. I didn't wrote down the statement.

Q Did you ever ask him about that?

A Well, later on I do.

Q That's what he said?

A No, he mumble himself.

Q But you never wrote that down?

A No, he mumble himself on that.

Q But, but you were able to overhear him saying he was nice to the family, the price had been reduced?

A Yes, the price had been reduced. The price I offer them, I don't believe they call the police. They set me up, get me in trouble, blah, blah, blah, such and such on.

Q You never wrote that down?

A I didn't write it down.

Q Is there anything else he said, mumbling or in response to your question, that you didn't write down?

A No.

Q When you were questioning -- withdrawn.

1

Proceedings

877

2

been harmed, and that harm can never be

3

undone because of it. So I'm asking that the

4

indictment be dismissed.

5

In conjunction with that, one of his

6

DD5s that I have been provided -- not the

7

handwritten copy, but all typed copies of one

8

of them, of the witnesses -- is it Jin Hao

9

Liu -- one of the two females he took a

10

three-page -- he prepared a three-page

11

typewritten document. ✓ I have only been given

12

pages 1 and 2, your Honor. I believe this is

13

also a clear violation of the Rosario rule.

14

And as such, either his testimony should be

15

stricken, or that as such, your Honor, the

16

indictment should be dismissed. That's my

17

first application.

18

THE COURT: You want to respond to that?

19

MR. KESSLER: Just basically, your Honor

20

will have an opportunity to take a look at

21

the page that is missing. The detective

22

indicated the notes he took were put down and

23

in sum and substance, were his DD5s. While

24

we agree there is missing Rosario, this Court

25

has a variety of sanctions it can impose.

Proceedings

878

1
2 We'd ask this Court impose the following
3 sanction based upon the missing Rosario
4 though. The Court instruct the jury that he
5 became aware during the testimony there was
6 missing paperwork by this police officer.
7 Therefore, they can draw negative inference
8 based upon that paperwork. I think it would
9 be to an extreme to start dismissing the
10 defendant, allowing him to be released based
11 upon a detective's failure to have a small
12 portion of his paperwork. Maybe if you look
13 at it in total --

14 THE COURT: Your motion to dismiss the
15 indictment is denied, but I will impose
16 sanctions that are appropriate.

17 MR. SCHECTER: Your Honor, my second
18 application would be to strike the testimony
19 of Thomas Hickey, the serologist in this
20 matter. Your Honor, Mr. Hickey's testimony
21 was subject to connection concerning the rape
22 kits that have never been introduced into
23 evidence. They were just marked for
24 identification.

25 THE COURT: They have never been

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

879

introduced into evidence.

You want to be heard?

MR. SCHECTER: I ask his testimony be stricken in view of the fact he testified about materials not in evidence.

MR. KESSLER: Judge, again, there is no requirement that anything he talked about has to be introduced into evidence. There are swabs and things in that kit there is no need for this jury to examine. The connection was made based on three witnesses, the women who testified they went to the hospital. The doctor who examined them said he did the kit, took their underwear, put it in the kit. And lastly, the police officer who indicated he went to the hospital, took the kit and delivered it to the serologist, Mr. Hickey, who performed certain tests. There is no requirement I introduce what he saw or did.

Defense counsel wants to put on experts talking about what they did with this, whatever the case may be, fine. This is beyond the province of the jury. They can't see semen. They can't examine slides, nor am

1

Proceedings

880

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I required to put in slides. The evidence was here. I marked it to show the connection that was being made. And he testified as to the steps he took. Just like we don't have the water or water tank for the detective who fired the gun into the water. He talked about what he did, the steps he took, what his results were, what he saw. That's it.

THE COURT: There doesn't have to be some chain of custody, getting the stuff from the hospital to him?

MR. KESSLER: Yes. I had Detective Greene testify. He said he went to downtown New York Hospital, picked up the Vitulo kits, differed them personally to serology in a sealed container.

THE COURT: There was no description by Detective Greene as to whether they were sealed.

MR. KESSLER: The doctor indicated he sealed the kits.

THE COURT: But did he get a sealed kit?

MR. SCHECTER: We don't know if it's the same kit that was taken. I can't examine it,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

883

because we have never been given a copy of the new indictment. You gave one copy for both of us. We were never given a copy of the new indictment.

MR. KESSLER: The 16th count, your Honor, is again the crime of sexual abuse in the first degree by touching her vagina with his penis. So again, I'm going to dismiss that count as well. And the 17th -- and the 17th count is sexual abuse in the first degree, contact by touching her breast with his hand. That's also in the 15th count. So I'm talking again, Judge, the old count -- I have just been handed the new indictment. So with regard to that, I'm going to dismiss the old 19th count. If you want, your Honor, I will discuss it now. I guess I have the new indictment in terms of the new counts.

THE COURT: Do it based --

MR. KESSLER: On the new counts.

THE COURT: We don't have a copy of that in the court papers. That should be a court exhibit and given to counsel. That should be made a court exhibit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 884

Step up for a minute, both of you.

(Sidebar discussion off the record.)

THE COURT: The defendant has indicated he is going to put in a case. I'm going to dismiss the jurors, do this while the jurors are out.

Work with the amended indictment.

MR. SCHECTER: Your Honor, you just going to tell them to come back 10:30?

THE COURT: I'm going to tell them we have a lot of legal matters to discuss because the People have rested. We are going to do that today and tomorrow morning, early morning.

(The jury entered the courtroom.)

THE CLERK: Case on trial continued. Let the record reflect all parties are present. Defendant is present. Defense attorney is present. Official Mandarin Interpreter, Assistant District Attorney, 12 regular jurors, four alternate jurors, all present and properly seated.

Both sides waive the formal reading?

MR. KESSLER: So waived.

Proceedings

885

1

2

MR. SCHECTER: So waived.

3

4

5

6

7

8

9

10

11

12

13

14

15

THE COURT: Ladies and gentlemen, as you heard, the People have rested. There are many legal matters we have to iron out before we can proceed further with the case. So I'm going to recess now until tomorrow morning at 10:30. Don't discuss the case among yourselves or with anyone else. Don't let anybody else discuss the case in your presence. Don't visit any of the locations you have heard about in the course of the trial. The court officer will tell you where to report tomorrow morning at 10:30, and have a nice evening.

16

(The jury left the courtroom.)

17

18

THE COURT: The jurors have left. Do you want to make your motions?

19

20

MR. SCHECTER: Whatever your Honor's pleasure is.

21

THE COURT: You work it out.

22

23

MR. SCHECTER: You want to do it tomorrow morning?

24

25

THE COURT: Let's see what he is dismissing first.

Proceedings

886

1
2 MR. KESSLER: Judge, what I'm dismissing
3 is as to the new indictment.

4 THE COURT: The amended indictment.

5 MR. KESSLER: The amended indictment.

6 THE COURT: As agreed upon by both
7 parties, let's make the record clear on that.

8 MR. KESSLER: 5th and 6th count, which
9 is kidnapping in the first degree with intent
10 to accomplish and advance the commission of a
11 felony. I'm also dismissing the 12th count
12 of the new indictment, which is sexual abuse
13 in the first degree, sexual contact by
14 touching her vagina with his penis.

15 MR. SCHECTER: Who is the complainant on
16 that?

17 MR. KESSLER: The complainant on that is
18 Liu Yan Wu as to the 12th count. I'm also
19 dismissing the 14th count, which is sexual
20 abuse in the first degree, which is sexual
21 contact by touching her vagina with his
22 penis, with the victim Jin Hao Liu.

23 Those are the counts I'm dismissing.

24 THE COURT: That's the 5th and 6th, the
25 12th and the 14th.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

887

MR. KESSLER: Correct.

MR. SCHECTER: So I assume there will be another amending of the indictment, of the numbers, your Honor, that --

THE COURT: Rearrange the numbers also. I need a copy of that for the record.

MR. KESSLER: A copy of this indictment.

THE COURT: Okay. How many counts do we have, 12?

MR. SCHECTER: Your Honor, what I would just ask tomorrow we be given a copy of the new amended --

THE COURT: Make copies for both counsel.

If you want to make your motions --

MR. SCHECTER: It will take me about 10 minutes. You want me to wait till tomorrow?

THE COURT: Then get here 10 o'clock.

The trial is recessed till 10 o'clock tomorrow morning.

* * * * *

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-

-----X

THE PEOPLE OF THE STATE OF NEW YORK	In
	No.
-against-	
	KIDNAP1
HAI GUANG ZHENG,	
	Trial
Defendant.	

-----X

July 2, 1996
125-01 Queens Boulevard
Kew Gardens, NY 11415

B E F O R E:

HONORABLE STANLEY B. KATZ,

Justice, and a jury

A P P E A R A N C E S:

(Same appearances as previously noted.)

DEBRA DUNN
Official Court Reporter

THE CLERK: This is page 2, indictment
3282 of '95, Hai Guang Zheng. Case on trial
continues.

THE COURT: Bring out the defendant,
please.

(The defendant entered the courtroom.)

THE CLERK: Counsel, your appearance,
please.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

889

MR. SCHECTER: For Hai Guang Zheng,
Donald Schecter, 10 Cutter Mill Road, Great
Neck, New York.

THE CLERK: People?

MR. KESSLER: Scott Kessler for the
People of the State of New York.

THE INTERPRETER: Mandarin interpreter
Li Wan.

THE CLERK: Let the record reflect the
presence of the defendant.

You are Hai Guang Zheng?

THE DEFENDANT: Yes.

THE CLERK: Mr. Schecter is your
attorney?

THE DEFENDANT: Yes.

MR. SCHECTER: Your Honor, I believe we
were up to the stage when we broke yesterday
that the People had rested and I had made
certain applications. Before I make my
motions at the end of the People's case, I
would ask your Honor if your Honor has had an
opportunity to determine and make any rulings
on those requests.

THE COURT: Repeat what applications you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

890

want me to rule on.

MR. SCHECTER: Well, your Honor, the first application was for a dismissal of the indictment.

THE COURT: Well, I denied that.

MR. SCHECTER: For sanctions against the People because of Detective Michael Greene, one, not having page three of a typewritten DD5 where he interviewed Liu Yan Wu -- excuse me, withdrawn -- Jin Hao Liu, your Honor, where there was a three-page typewritten DD5.

THE COURT: I'm aware of that.

MR. SCHECTER: Then also that he did not have any of the handwritten notes for his interviews with Liu Yan Wu and Jin Hao Liu.

Has your Honor made any determination?

THE COURT: Yes. I will impose sanction which I will advise you of prior to your --

MR. SCHECTER: Summation.

THE COURT: -- summing up.

MR. SCHECTER: And also I would ask -- I believe Mr. Hickey's testimony should be stricken because the People never put into evidence the serological --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 891

THE COURT: That's denied. But you may comment on anything you wish within reason concerning his testimony.

MR. SCHECTER: Are you denying my application to strike his testimony?

THE COURT: Yes.

MR. SCHECTER: I'm excepting to that ruling.

THE COURT: That goes to the weight of his testimony.

MR. SCHECTER: Your Honor, as to my motion at the end of the People's case, I will move under the 1st count of the indictment to dismiss, as the People have failed to make out a prima facie case to show that Liu Yan Wu was abducted between March 31st and April 2nd with intent to compel a third person to pay or deliver property or ransom.

I believe the testimony, as such has come out, has failed to show my client was part and parcel of such evidence. The evidence was legally sufficient --

THE COURT: That's denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

892

MR. SCHECTER: As to the 2nd count, I would make the same application, but as to Jin Hao Liu.

THE COURT: That's denied.

MR. SCHECTER: As to the 3rd count, your Honor, which is kidnapping in the first degree, I believe the People have failed to sustain their burden and shown a prima facie case that between March 31st and April 2nd Liu Yan Wu that was restrained for a period of more than 12 hours with intent to violate and abuse her sexually. I believe the testimony was insufficient to show that my client specifically had anything to do with the restraining of her and the sexually abusing of her.

THE COURT: That's denied.

MR. SCHECTER: As to the 4th count, I make the same application, but just as to Jin Hao Liu.

THE COURT: That's denied.

MR. SCHECTER: As to the 5th count, your Honor, I would move that the People failed to sustain their burden of kidnapping in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

893

first degree that the defendant, aided by another, between March 31, 1995 and April 2, 1995, abducted Liu Yan Wu and restrained Liu Yan Wu for a period of more than 12 hours with intent to terrorize her. I believe the testimony was insufficient to show there was any terrorizing going on and that it was part and parcel of the restraining of Liu Yan Wu for a period of --

THE COURT: I believe there is adequate proof to give that to the jury --

MR. SCHECTER: Your Honor --

THE COURT: -- all of those counts.

MR. SCHECTER: As to the 6th count, I would make the same argument, but just where Liu Yan Wu was I would say that as to Jin Hao Liu.

THE COURT: That's denied also for the same reason.

MR. SCHECTER: The 7th count, rape in the first degree, I believe the testimony was insufficient to show that my client engaged in sexual intercourse with Liu Yan Wu by means of forcible compulsion, your Honor. I

Proceedings

894

1
2 believe there was no testimony to show there
3 was any force used or that there was sexual
4 intercourse with her. The testimony --
5 nothing was introduced as to anything
6 serological was introduced into evidence of
7 the rape kit, never introduced into evidence.
8 I believe as such the evidence was
9 insufficient that --

10 THE COURT: That's denied.

11 MR. SCHECTER: As to the 8th count, I
12 substitute Jin Hao Liu's name for that.

13 THE COURT: That's denied also.

14 MR. SCHECTER: As to the 9th count, your
15 Honor, I believe the evidence was
16 insufficient to show that my client took part
17 in the kidnapping of Guo Bang Liu, as to
18 kidnapping in the second degree. I believe
19 the evidence was insufficient to show that,
20 from the testimony and the description, that
21 my client had anything to do with the
22 kidnapping of Guo Bang Liu.

23 THE COURT: That's denied.

24 MR. SCHECTER: As to the 10th count,
25 your Honor, the sexual abuse in the first

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

895

degree, I believe the testimony was insufficient to show my client between March 31st and April 2nd subjected Liu Yan Wu to sexual contact by touching her breast with his hand. I believe the evidence was insufficient to show that.

THE COURT: That's denied also.

MR. SCHECTER: As to the 11th count, your Honor, I would just substitute Jin Hao Liu for that.

THE COURT: Likewise, that's denied.

MR. SCHECTER: As to the final count, your Honor, I don't believe the testimony was sufficient for criminal possession of a weapon in the second degree with intent to use unlawfully against another. I don't believe there's been any testimony that between March 31st and April 2nd my client possessed a gun, a loaded firearm which was operable, with intent to use unlawfully against another. The only weapon that was introduced here, your Honor, was never connected to my client, as neither one of the females ever said -- either they didn't see

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 896

the weapon -- during their testimony here that was the same gun that was used during the course of the kidnapping. There's been no testimony from them and any police officer that -- there was no weapon -- they were shown a weapon right after the police spoke to them to show this was the weapon that was used. In that sense, your Honor, there was no testimony linking my client to a loaded operable weapon.

THE COURT: That's denied. I believe there is sufficient evidence.

MR. SCHECTER: Excepting to all the rulings.

THE COURT: Other than that, you ready to proceed?

MR. SCHECTER: Yes.

THE COURT: Are you putting on a case?

MR. SCHECTER: Yes.

THE COURT: All right. Bring the jury in.

(The jury entered the courtroom.)

THE CLERK: Case on trial continues.

The defendant is seated in the courtroom with

1 Zheng - Defendant - Direct 897

2 defense counsel and the interpreter. The
3 A.D.A. is present. The jury is seated in the
4 jury box.

5 Counsel waive the reading of the roll
6 call?

7 MR. SCHECTER: So waived.

8 MR. KESSLER: So waived.

9 THE COURT: Good morning, ladies and
10 gentlemen. We will now hear the defendant's
11 case. You may call --

12 MR. SCHECTER: Good morning.

13 Good morning, your Honor. Your Honor,
14 at this time Hai Guang Zheng will take the
15 witness stand in his own defense.

16 H A I G U A N G Z H E N G, the defendant
17 testifying on his own behalf, after
18 having been first duly sworn, took the
19 witness stand and testified as follows:

20 MR. SCHECTER: Mr. Interpreter, would
21 you step back so the jurors can see him.
22 Step back further.

23 DIRECT EXAMINATION

24 BY MR. SCHECTER:

25 Q Hai, I'm going to ask you questions from

1 Zheng - Defendant - Direct. 898

2 here, and I would ask both you and the interpreter speak
3 loud enough so that I can hear your answers. If you
4 don't understand anything I ask you, just say you don't
5 understand and I'll repeat the question or rephrase it.
6 Okay.

7 How old are you?

8 A 27.

9 Q Where were you born?

10 A China.

11 Q What part of China?

12 A Fu Chow.

13 Q Do you have any relatives of yours that still
14 live in China?

15 A Parents.

16 Q And do they live in the same town where you
17 came from?

18 A Right.

19 Q Do you speak English?

20 A No.

21 Q Do you write English?

22 A No.

23 Q Do you read English?

24 A No.

25 Q What language do you speak?

1 Zheng - Defendant - Direct 899

2 A Mandarin.

3 Q Now Hai, when did you come to the United
4 States?

5 A '92.

6 Q And did you have to pay money to come to the
7 United States?

8 A Right.

9 Q How much did you have to pay for your trip to
10 come to the United States?

11 A 30,000.

12 Q And did you pay that entire amount when you
13 came to the United States?

14 A I paid 18,000 and I still owe 12,000.

15 Q Now, who do you owe \$12,000 to?

16 A A snakehead.

17 Q Can you describe to the jury what a snakehead
18 is?

19 A Okay. A snakehead is somebody who sponsors
20 and helps me to illegally immigrate to America. His
21 name is Ak (phonetic) Guan, G-U-A-N.

22 Q Does he know where your family lives in
23 China?

24 MR. KESSLER: Objection.

25 THE COURT: Sustained.

1 Zheng - Defendant - Direct 900

2 Q Is that person in the United States or is he
3 in China?

4 A In America.

5 Q And do you owe him any money?

6 A Yes. Still owe 12,000.

7 Q Now, on March 31st of 1995 did you speak to
8 Ak Guan (phonetic)?

9 A Yes.

10 Q And did you call him or did he call you?

11 A He called me.

12 Q And did he ask you to do something?

13 A He asked me to go to the airport to pick up a
14 friend.

15 Q Did anyone go with you to the airport?

16 A No.

17 Q Did there come a time that you were at the
18 airport that you met someone?

19 A Ak Guan was waiting for me at the airport.

20 Q And what happened when you met Ak Guan at the
21 airport?

22 A Okay. Ak Guan get into -- got in my car, and
23 for a short while. He said, how come my friends got
24 into the other car?

25 Q Then what happened?

1 Zheng - Defendant - Direct 901

2 A Okay. Then he asked me to get to that car,
3 see what happened. Then he asked me to get to the car
4 and see what happened.

5 Q Did you do that?

6 A Yes.

7 Q Then what happened?

8 A Then he asked me to remain inside and he went
9 out.

10 Q Where did he go?

11 A Okay. He went to the car that we stopped.

12 Q Did you ever get out of the car?

13 A After a while I went out and asked the driver
14 what happened.

15 Q Where was --

16 THE COURT: What driver are you talking
17 about?

18 THE WITNESS: I went out to ask for the
19 other driver.

20 Q Where was Ak Guan at this time?

21 A Ak Guan was at the back of the car and get
22 out the three guys, three persons.

23 Q He asked -- what did Ak Guan ask?

24 A Could you rephrase it?

25 Q Did anyone get out of the other car?

1 Zheng - Defendant - Direct 902

2 A Yes.

3 Q How many people got out of the other car?

4 A Three person.

5 Q Were they all male, all female, or was there
6 a mixture?

7 A One male, two female.

8 Q And at that time while you were outside of
9 your car, did you have any conversation with any of
10 those three people?

11 A No.

12 Q Did you have any gun with you? Did you have
13 a gun with you on March 31st?

14 A No.

15 Q Did Ak Guan have a gun with him?

16 A Seems that he has a gun at that time.

17 Q Now, did those three people get into your
18 car?

19 A Yes.

20 Q Did you then get back in the car and start
21 driving away?

22 MR. KESSLER: Judge, again, he's been
23 leading the witness a little bit.

24 THE COURT: I would suggest you stop
25 leading the witness.

1 Zheng - Defendant - Direct 903

2 Q After the three people got in the car, what
3 happened?

4 A Ak Guan asked me, asked me to drive away.

5 Q Did you have any conversation with the three
6 people that were in the car after he drove away?

7 A No.

8 Q Did Ak Guan have any conversation with the
9 three people?

10 A Okay. I remember he seemed to, to have
11 spoken to them just a few sentences, but I don't recall,
12 remember what he said to them.

13 Q Did there come a time that you stopped the
14 car?

15 A Yes.

16 Q What happened when you stopped the car?

17 A Okay. While, when I stopped the car, Ak Guan
18 asked a man to get out.

19 Q Did you give that man anything?

20 A Okay. I gave him two quarters.

21 Q After the man got out of the car, did you
22 start driving again?

23 A Yeah. Ak Guan asked me to drive away.

24 Q Did you know where you were going at that
25 time?

1 Zheng - Defendant - Direct 904

2 A No.

3 Q Were you told to go somewhere?

4 A Later on he told me to drive to a avenue, a
5 sort of a hundred or something. I don't recall,
6 remember.

7 Q Did you drive there?

8 A Yes.

9 Q And had you ever been in that place before?

10 A No.

11 Q Did you live there?

12 A No.

13 Q Did you have a key to that place?

14 A No.

15 Q How did you get into that place?

16 A Ak Guan brought us inside.

17 Q Did there come a time did Ak Guan go into the
18 apartment with you?

19 A Yes.

20 Q And did there come a time that Ak Guan left
21 the apartment?

22 A Yes.

23 Q Now, prior to his leaving the apartment, did
24 you have a conversation with Ak Guan about the two
25 females?

1 Zheng - Defendant - Direct 905

2 A Yes.

3 Q What was that conversation?

4 A Ak Guan asked me to ask for money from the
5 family members.

6 Q And what did you tell him at that time?

7 A At that time I didn't give any consent, but
8 he said, if you don't agree I will kill your family
9 members in China. And you still owe me money. I will
10 send you back to China.

11 Q Are you afraid of Ak Guan?

12 A Yes.

13 Q Have you ever seen what Ak Guan has done to
14 other people who have disobeyed him?

15 A Okay. He speak to Ye Guan (phonetic) in very
16 rough manner. And I know that Ye Guan -- I also know
17 Qin Zheng also very afraid of him.

18 Q Did there come a time Ak Guan left the
19 apartment?

20 A Yes.

21 Q How much money did Ak Guan ask you to ask the
22 family for?

23 A I remember it was 20,000.

24 Q Was that 20,000 total or was that for each of
25 the two females?

1 Zheng - Defendant - Direct 906

2 A For two.

3 Q For two of them? For each?

4 A For two females.

5 Q Did there come a time eventually on April 1st
6 when you had a conversation with the family of the two
7 females?

8 A Okay. Well, I really called them, but on the
9 second day. But I don't remember who -- the person I
10 was talking to.

11 Q During that second day were you -- did you
12 have any conversations with Ak Guan?

13 A Yes.

14 Q And how many different times did you speak to
15 Ak Guan on April 1st, if you can tell the members of the
16 jury?

17 A Okay, about two or three times. Ak Guan
18 sometimes called back and sometimes he came to visit.

19 Q Now, were you afraid for your family if you
20 didn't do what Ak Guan told you to do?

21 MR. KESSLER: I object again. He
22 appears to be leading the witness with a yes
23 or no answer.

24 THE COURT: Sustained as to the form of
25 the question.

1 Zheng - Defendant - Direct 907

2 Q What would have happened if you didn't do
3 what Ak Guan told you to do?

4 MR. KESSLER: Objection, calls for
5 speculation.

6 THE COURT: Sustained.

7 Q Did there come a time that you had asked the
8 person on the other side of the phone for money?

9 A Yes.

10 Q How much -- the first time you asked the
11 other person for money, how much was that? How much did
12 you ask for?

13 A Seems at first Ak Guan asked me to ask for --

14 THE COURT: How much did you ask for is
15 the question.

16 A 20,000.

17 Q And did there come a time that that amount
18 was reduced? Did there come a time that you asked for
19 less money?

20 A Later on Ak Guan asked me to reduce to 15 --

21 THE COURT: The question is, how much
22 did he ask for, the reduced amount?

23 MR. SCHECTER: Well, your Honor --

24 THE COURT: Respond to the question.

25 A 15,000.

1 Zheng - Defendant - Direct 908

2 Q Is that for each one or was that for both of
3 them?

4 A Both.

5 Q Were you the person who decided to reduce the
6 price?

7 A No, it was Ak Guan who decided.

8 Q And there was an address of 217 Henry Street
9 where the money was to be delivered; is that correct?

10 MR. KESSLER: Judge, again I --

11 THE COURT: Sustained as to the form of
12 the question.

13 Q Do you know where the money was -- where the
14 \$15,000 was to be taken to?

15 A Yes.

16 Q What was that address?

17 A It was Henry Street.

18 Q Do you know the number on Henry Street?

19 A It's about 20 -- 200 and something.

20 Q Something on Henry Street?

21 A Yes.

22 Q Do you have -- do you have any friends or
23 relatives who live at that address on Henry Street?

24 A No.

25 Q How was it determined that the money was to

1 Zheng - Defendant - Direct 909

2 be delivered to that address?

3 A It was Ak Guan who decided.

4 Q And did he tell you, you have to speak to the
5 person and deliver the money to that address?

6 MR. KESSLER: Judge, again I'd ask to
7 stop leading the witness.

8 THE COURT: Sustained. Please don't
9 lead the witness any further.

10 Q Did you tell the people -- withdrawn.

11 Now, on April 2nd were you arrested?

12 A Yes.

13 Q And who was in the car with you when you were
14 arrested?

15 A In all we have four.

16 Q Were the two females in the car?

17 A Yes.

18 Q And where were you going at that time?

19 A I was planning to send them back home.

20 Q And after you were arrested -- withdrawn.

21 While you were at the apartment with the females,
22 did you ever hit either of the two females?

23 A No.

24 Q Did you ever kick any of the females?

25 A No.

1 Zheng - Defendant - Direct 910

2 Q Did you ever threaten any of the females?

3 A No.

4 Q After you were arrested, where were you
5 taken?

6 A Police precinct.

7 Q Do you know where that was?

8 A I don't know the exact location.

9 Q And did you have anything to eat or drink
10 while you were at the police precinct? How were you
11 treated while you were at the police precinct?

12 A Okay. After the lineup I was beaten by the
13 cops.

14 Q How were you beaten?

15 A After the lineup I just pass by the door. A
16 cop hit me with iron bucket.

17 Q How many times were you struck by the police
18 that day?

19 A While I was doing their statement I was also
20 beaten.

21 Q Was that by the police officer who was in
22 here yesterday?

23 A He insulted me. Another guy, another cop,
24 come in and beat me.

25 Q How did he insult you?

1 Zheng - Defendant - Direct 911

2 A He said, why did you kidnap and rape the
3 women?

4 Q Now, what did you tell him?

5 THE COURT: Tell who? Tell that person
6 who insulted you?

7 MR. SCHECTER: I will withdraw that
8 question.

9 Q The person who insulted you, was that that
10 Chinese detective who testified yesterday?

11 A Yes.

12 Q What did you tell that person?

13 A He asked me why I kidnap the two women and
14 rape them.

15 Q And what did you tell him?

16 A I said I didn't.

17 Q You didn't what?

18 A I didn't rape them.

19 Q What did you tell him when he asked you why
20 you kidnapped them?

21 A I, I told him that I really don't know what
22 happened because, because --

23 Q Did you ever give -- did you ever tell that
24 detective this long statement that he says -- withdrawn.

25 MR. SCHECTER: Can I see People's 12.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Zheng - Defendant - Direct.

912

(Shown to defense counsel.)

Q How long did you speak to that Chinese detective?

A He just asked me how old --

THE COURT: No, the question is how long did he speak to him.

A Not very long.

Q Was he writing while you were speaking to him?

A I just remember when I was speaking he was writing. I didn't speak much. He wrote, seemed to wrote -- seemed to write a lot.

Q Did he ask you to sign something?

A Yes.

Q Were you able --

MR. SCHECTER: Show him B, C, and D.

THE COURT: Let the record show the witness is being shown People's 12-B, C, and D in evidence.

Q Did you sign that?

A He asked me to sign here.

THE COURT: The question is, did you sign it?

A Yes.

1 Zheng -- Defendant - Direct 913

2 Q Did anyone direct you to sign it?

3 A Yes.

4 Q Who was that --

5 A That policeman, he asked me to write like
6 that.

7 Q Were you able to read what you had signed?

8 A No.

9 Q Did he ever read it to you and then ask you
10 to sign?

11 A He didn't read to me.

12 Q And you said there was another police officer
13 in the room with him?

14 A After he beat me, he left.

15 Q When you say, he beat you, what did he do to
16 you?

17 A Okay. At that time the Chinese cop asked me
18 why did I kidnap the person. I said I didn't. Ak Guan
19 asked me --

20 THE COURT: That's not responsive to the
21 question. Please repeat the question.

22 Q You said that that other police officer in
23 the room beat you. What exactly did he do to you?

24 A He just struck me on the left.

25 Q Did he strike you with his hand or with a

1 Zheng - Defendant - Direct 914

2 weapon?

3 A With his hand.

4 Q How many times were you struck?

5 A He struck me on my stomach very heavily.

6 Q How many times?

7 A Once.

8 Q Now, were you told what would happen if you
9 did not sign the statement?

10 MR. KESSLER: Objection.

11 THE COURT: Sustained as to the form of
12 the question.

13 Don't lead the witness, please.

14 Q Were you ever given anything to eat or drink
15 at the police station?

16 A No.

17 Q During the period between March 31st and
18 April 2nd of 1995 did you ever have sexual relations
19 with Liu Yan Wu?

20 A No.

21 Q During the period of March 31, 1995 and April
22 2, 1995 did you ever have sexual relations with Jin Hao
23 Liu?

24 A No.

25 Q During that time did you have any marks on

1 Zheng - Defendant - Direct 915

2 your body?

3 A Okay. I had a scar on my thigh and --

4 Q Where on your thigh?

5 MR. KESSLER: Objection.

6 THE COURT: Sustained.

7 Q Can you describe the mark?

8 MR. KESSLER: Objection.

9 THE COURT: Step up.

10 (Sidebar discussion off the record.)

11 Q How big was that scar on your leg?

12 A It was not very deep. Not big. Like that
13 (indicating.)

14 Q About --

15 MR. KESSLER: Judge --

16 THE COURT: Indicating about one inch.

17 MR. KESSLER: Can we have the witness
18 use his hand rather than the interpreter's
19 hand. I can't see.

20 MR. SCHECTER: Ask him to put out his
21 hand how --

22 THE COURT: Indicating about an inch and
23 a half.

24 Q Did you have any other marks or bruises on
25 your body?

1 Zheng - Defendant - Direct 916

2 A I had -- I have a birth mark near my genital
3 organs.

4 Q Can you describe that birth mark?

5 A It was dark, about two fingers' width.

6 Q On any time between March 31, 1995 and April
7 2nd of 1995 did you ever rape Liu Yan Wu?

8 MR. KESSLER: Objection. Asked and
9 answered.

10 THE COURT: Sustained.

11 MR. SCHECTER: Your Honor, that's
12 different than if he ever had sexual
13 relations.

14 THE COURT: If he didn't have sexual
15 relations, he didn't rape her.

16 MR. SCHECTER: Your Honor, I would just
17 ask two more questions.

18 THE COURT: Please go ahead.

19 Q Between March 31, 1995 and April 2, 1995 did
20 you ever rape Liu Yan Wu?

21 A No.

22 Q Between the periods of March 31, 1995 and
23 April 2, 1995 did you ever rape Jin Hao Liu?

24 A No.

25 MR. SCHECTER: Your Honor, I have no

Zheng - Defendant - Cross

917

further questions.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. KESSLER:

Q Did you between March 31, 1995 and April 2, 1995 hold these women so that a ransom could be paid for their release; yes or no?

A What time?

Q Between March 31st and April 2, 1995 did you hold these two women so that a ransom could be paid for their release; yes or no?

A Yes.

Q Holding them with you was a man named Qin Zheng; is that correct?

A No.

Q Was Qin Zheng in the apartment with you between March 31st and April 2nd of 1995?

A Yes.

Q And were the two women in the apartment with you?

A Yes.

Q And these two women, they weren't there voluntarily, were they?

MR. SCHECTER: Objection to the term

1 Zheng - Defendant - Cross 918

2 "voluntarily."

3 THE COURT: Sustained.

4 Q You held them there by force, correct?

5 MR. SCHECTER: Objection to the term --

6 THE COURT: Overruled.

7 A No.

8 Q They were free to go at any time they wanted?

9 A That I don't know.

10 Q Well, how long were they there in that
11 apartment; how many hours?

12 A From that evening to the evening of the
13 second day.

14 Q Did they look like they were having a good
15 time at all?

16 MR. SCHECTER: Objection.

17 THE COURT: Sustained.

18 Q Were you guys partying at all?

19 MR. SCHECTER: Objection.

20 THE COURT: Overruled.

21 MR. SCHECTER: Your Honor, the term
22 "partying" --

23 THE COURT: Well, if he doesn't
24 understand, he will say he doesn't
25 understand.

1 Zheng - Defendant - Cross 919

2 A What is a party?

3 Q Were you offering them drinks? Were they
4 dancing with you? Was everyone having a good time?

5 A I give them food, but we didn't dance. They
6 didn't mess around.

7 Q Did they look like they were enjoying your
8 company at all?

9 MR. SCHECTER: Objection.

10 THE COURT: Sustained.

11 Q Were you enjoying their company?

12 MR. SCHECTER: Objection.

13 THE COURT: Sustained.

14 Q This man you mentioned, Ak Guan, he was the
15 man who was with you at the airport?

16 A He went to the airport first.

17 Q You met him at the airport?

18 A Yes.

19 Q He got into your car?

20 A Yes.

21 Q You were the driver?

22 A Right.

23 Q And he told you his friends accidentally got
24 into another car?

25 A Yes.

1 Zheng - Defendant - Cross 920

2 Q And he told you to follow that car?

3 A Yes.

4 Q Didn't you cut off that car so it couldn't go
5 anywhere?

6 A He asked me to stop the car to see whether
7 his friend had any trouble on the other car.

8 Q Well, did you flash your headlights at the
9 other car in order to make the other car stop?

10 A I just turn on the right light, on the right
11 side.

12 Q When you say, "the right light," you signaled
13 before you cut them off?

14 A Yes.

15 Q Did you ever honk your horn?

16 A Yes.

17 Q The car didn't stop?

18 A It was very slow.

19 Q Did you then cut your car in front of that
20 car; yes or no?

21 A Yes.

22 Q And at this point in time you thought it was
23 just Ak Guan trying to stop his friends?

24 A Yes.

25 Q Then you noticed Ak Guan get out of his car,

1 Zheng - Defendant - Cross 921

2 right -- out of your car?

3 A Yes.

4 Q And in fact, you later got out of your car?

5 A I saw that he talked to them a long time, so
6 I just went to the driver to see what had happened.

7 Q Well, you noticed he had a gun on him, didn't
8 you?

9 A I didn't see clearly. Seems like he had
10 something on his hand.

11 MR. KESSLER: Well, can we show the
12 witness very carefully the weapon that's been
13 introduced at this trial --

14 THE COURT: People's 10.

15 MR. KESSLER: People's 10.

16 And from a distance.

17 MR. SCHECTER: Objection to the District
18 Attorney's last comment.

19 THE COURT: Strike it. The jury will
20 disregard. I'm sure the court officer will
21 take security measures.

22 Q Do you see what I'm showing you?

23 A Yes.

24 Q What does that look like to you?

25 A It was a gun.

1 Zheng - Defendant - Cross 922

2 Q Is that what Ak Guan looked like he had on
3 him when he left the car?

4 MR. SCHECTER: Objection.

5 THE COURT: Overruled.

6 A He left the car very quickly. And at that
7 time it was really dark and I just see he seem to have
8 something on his hand.

9 Q Did it look like a gun to you?

10 MR. SCHECTER: Objection to what it
11 looked like.

12 THE COURT: Overruled.

13 A I cannot make sure. He sit behind me.

14 Q Well, when you got out of your car, you had a
15 gun too, didn't you?

16 A No.

17 Q In the apartment where the women were being
18 held, there was a gun there, wasn't there?

19 A I cannot make sure. I cannot remember that.

20 Q You don't remember holding a gun to one of
21 the womens' heads at any point in time?

22 MR. SCHECTER: Objection, your Honor.

23 Asked and answered. The answer is he doesn't
24 remember.

25 THE COURT: Overruled. This is cross

1 Zheng - Defendant - Cross 923

2 examination.

3 A No, it's not correct.

4 Q Do you remember something that looked like a
5 gun that may have been in the apartment during those two
6 days?

7 MR. SCHECTER: Objection.

8 THE COURT: Overruled.

9 A It was a long time. I really cannot recall
10 now.

11 Q Now, you said that Ak Guan dropped one of the
12 people off at a location and you gave them quarters; is
13 that correct?

14 A It seemed I did give him some quarters. It
15 was a long time. I cannot remember.

16 Q You seemed to remember on direct examination
17 that you gave them quarters. Was that also a long time
18 ago?

19 MR. SCHECTER: Objection to the
20 question, your Honor.

21 THE COURT: Overruled.

22 A At that time I answer the question it seems
23 to be in a hurry. Now, upon second thought, I feel
24 it's, it's really vague. My memory is really vague. I
25 cannot remember exactly.

1 Zheng - Defendant - Cross 924

2 Q Answer me this. What percentage of your
3 testimony was actually accurate on direct examination?

4 MR. SCHECTER: Objection.

5 THE COURT: Sustained.

6 Q Well, you said you weren't really clear on
7 some of your answers. Was that the only answer, or were
8 there others on direct examination you weren't really
9 clear about?

10 A What question? You mean the question about
11 the quarters or the money, or what else?

12 Q My question to you is simply I want to make
13 sure that your answers were accurate other than the
14 quarter answer. Anything else Mr. Schecter asked you on
15 direct examination --

16 MR. SCHECTER: Objection, your Honor.

17 Let him ask him specific --

18 THE COURT: You want him to go through
19 all the testimony?

20 MR. SCHECTER: Whatever I wasn't --

21 THE COURT: Sustained then. Go through
22 the testimony.

23 Q When you told him that Ak Guan was waiting at
24 the airport, was that accurate?

25 A Yes.

1 Zheng - Defendant - Cross 925

2 Q When you told him on direct examination that
3 Ak Guan said, if you didn't do what I say, I may kill
4 your family in China, was that accurate?

5 MR. SCHECTER: Objection to the term
6 "may."

7 THE COURT: I don't know what the exact
8 testimony was.

9 MR. SCHECTER: I will withdraw it.

10 THE COURT: You may answer the question.

11 A Yes, if I didn't do as he told me, he will
12 kill -- he will kill my family in China and send me back
13 to China.

14 Q And he said he would kill your family in
15 China on a future date; would that be fair to say?

16 MR. SCHECTER: Objection.

17 THE COURT: Sustained as to the form.

18 Q Did you interpret what he said to mean if you
19 didn't do what he said, at a later time he would kill
20 your family?

21 MR. SCHECTER: Objection.

22 THE COURT: Overruled.

23 A Yes, he said that.

24 Q He also said that if you didn't do what he
25 wanted, at a later time he would send you back to China;

1 Zheng - Defendant - Cross 926

2 is that correct?

3 A Yes.

4 Q So these were not immediate threats, but
5 threats in the future if you did not do what he wanted,
6 correct?

7 MR. SCHECTER: Objection, your Honor.

8 THE COURT: Sustained. That's for the
9 jury to determine.

10 Q When you were in the car with Ak Guan and the
11 three other people did you start to get the idea that
12 they weren't there voluntarily?

13 MR. SCHECTER: Objection.

14 THE COURT: Overruled.

15 A I was concentrating on driving. I really
16 didn't notice that.

17 Q Did you notice when Ak Guan was demanding
18 their passports, or were you concentrating on driving at
19 that time?

20 A Okay. I was just driving. I didn't notice,
21 didn't notice he take the passports.

22 Q Did you give the man in the car who left
23 quarters, yes or no, if you recall right now?

24 A It seems like I did.

25 Q Do you recall why it seems like you gave this

1 Zheng - Defendant - Cross

927

2 man quarters?

3 MR. SCHECTER: Objection.

4 THE COURT: Overruled.

5 A Okay. It seemed that Ak Guan asked me
6 whether I have quarters, if I can give them some. I
7 don't remember exactly.

8 THE COURT: Wait a minute. The witness
9 just said something. Would you translate.

10 A I really don't remember what exactly
11 happened.

12 Q Between March 31st and April 2nd of 1995 do
13 you have difficulty remembering details about the events
14 that took place that day?

15 MR. SCHECTER: Objection.

16 THE COURT: Overruled.

17 A From the point, from now, or at that time?

18 Q Between -- as you sit here now do you have
19 difficulty remembering the events that took place
20 between March 31st and April 2nd of 1995; yes or no?

21 A It has been over a year. A lot of details
22 been forgotten.

23 Q Do you remember actually -- you also changed
24 your hair in the last year, haven't you?

25 MR. SCHECTER: Objection, your Honor.

1 Zheng - Defendant - Cross 928

2 That calls for a conclusion.

3 THE COURT: Overruled. He can answer
4 that.

5 A I was in custody for long time. I didn't
6 have my hair cut.

7 Q Did you change your hair between March 31,
8 1995 and today, your hair style?

9 A Yes.

10 Q You also used to have a little bit of a
11 mustache and a goatee, didn't you, on March 31, 1995?

12 A I cannot recall.

13 MR. KESSLER: Could you show the witness
14 People's -- I'm losing track of the numbers
15 and I apologize.

16 THE COURT: 7 and 8.

17 MR. SCHECTER: Number 7, your Honor.

18 MR. KESSLER: Could I see it before we
19 show the witness.

20 (Shown to A.D.A.)

21 Q Can we show the witness number 7. And I'll
22 ask him if that refreshes his memory as to the beard and
23 goatee.

24 A Yes, it was like that.

25 Q That's what you looked like on March 31,

1

Zheng - Defendant - Cross

929

2

1995?

3

A Yes.

4

Q And your hair used to be a little more

5

straight up then, didn't it?

6

A Okay. I remember -- seems I didn't have my

7

hair washed, or so the hair got stuck.

8

Q Could you tell me when you got to this house

9

in Queens with the two women and Ak Guan, is it at this

10

point in time you start to get the idea these women are

11

about to be kidnapped?

12

MR. SCHECTER: Objection to the term

13

"kidnapped."

14

THE COURT: Sustained as to the form of

15

the question.

16

Q Did there come a point in time when you

17

became aware that these women were not with you

18

voluntarily?

19

MR. SCHECTER: Objection to the term

20

"voluntarily."

21

THE COURT: Overruled.

22

A At that time I didn't have such feeling, but

23

Ak Guan really told me that I would demand money from,

24

from their family.

25

Q So the first time you got the feeling that

1 Zheng - Defendant - Cross 930

2 these women were not here voluntarily is when Ak Guan
3 told you, I'm demanding money for them?

4 A Well, when I was with him, or with them, I
5 really don't have such a feeling -- how to explain
6 that -- it was not like deeply sorrow, or not joy.

7 Q Are you saying that you never really got the
8 idea they were being held against their will?

9 MR. SCHECTER: Objection to the term --

10 THE COURT: Overruled.

11 A That I don't know.

12 Q What specifically did Ak Guan tell you about
13 these two women -- when you were in the car with them?

14 A On the car, no, he just asked me to drive.

15 Q Did you see the women shaking in fear in the
16 back seat of this car that you were driving?

17 MR. SCHECTER: Objection.

18 THE COURT: Overruled.

19 A No, I absolutely didn't see that.

20 Q Did they ever in the car to you appear
21 frightened at all?

22 A I was in the front. I was driving. I really
23 didn't see them.

24 Q When you got out of the car and you're not
25 driving any more on the way into the house, did they

1 Zheng - Defendant - Cross

931

2 appear to be frightened to you?

3 A Walking to the apartment?

4 Q Yes.

5 A I didn't have such feeling.

6 Q They didn't appear fearful. Is what you're
7 saying?

8 A I didn't notice.

9 Q When you got into the house, could you tell
10 us the specific instructions Ak Guan told you before he
11 left?

12 A To the two woman?

13 Q What to do with the two women.

14 A He didn't say much to me.

15 Q What did he say to you?

16 A You mean the whole day or at that time, at
17 the particular point of time?

18 Q The whole day. What were your instructions
19 from Ak Guan exactly about the two women on that day?

20 A He asked me to call their family for money,
21 and I asked why. He said, don't ask why. Just you do
22 as I you told you. Otherwise I kill your family
23 members.

24 Q Other than asking you to call his family for
25 money, did he give you any other instructions that day

1 Zheng - Defendant - Cross 932

2 before he left?

3 A He told me that he is going to contact me the
4 second day and he would come.

5 Q After he told you to call the family for
6 money, did you call the family for money?

7 A That night I didn't call their family. I
8 just made a call to a friend.

9 Q When you spoke to this friend did you tell
10 this friend that you were being forced to kidnap these
11 two women against your will?

12 A I told my friend that I really had a bad luck
13 tonight. I was called up by Ak Guan to go to the
14 airport to pick up two women. He asked me to report to
15 the police. And I said I cannot. If I do, I will die.

16 Q So you told him you really had a bad luck
17 day?

18 A Yeah.

19 Q Now, you obviously had a phone down in this
20 apartment, correct?

21 A The phone in the basement, it was not mine.

22 Q Well, there's more than one phone in the
23 basement. You had like three or four phones, didn't
24 you?

25 A One -- one is mine.

1 Zheng - Defendant - Cross 933

2 Q My question is, weren't there three or four
3 phones down there, one being yours? ✓

4 A Yes.

5 Q So did those phones work; to your knowledge?

6 A Ak Guan told me, if you want to use the
7 phone, you can use the phone.

8 Q Did you -- after Ak Guan told you to call the
9 family -- call the family before you ever spoke to Ak
10 Guan again, or after you spoke to Ak Guan again?

11 A Okay. On the second day after Ak Guan called
12 me -- after I had a conversation with Ak Guan I called
13 their family.

14 Q The second time you speak to Ak Guan tell me
15 exactly what he told you your instructions were at that
16 point in time?

17 A He asked me whether I called their family.

18 Q And you told him no, right?

19 A Right.

20 Q What other instructions or anything did he
21 say to you during that conversation?

22 A He was very angry and he asked me what
23 happened. How come you didn't call their family? He
24 seemed to be very much infuriated.

25 Q What, if any, instructions did he give you

1 Zheng - Defendant - Cross 934

2 during that phone conversation you had with him?

3 A He just asked me to call their family
4 demanding for money.

5 Q Did he say anything else in terms of
6 instructions other than for you to call the family and
7 demand money?

8 A Just told me that after I got the money, just
9 to send it to 200 something Henry Street.

10 Q Other than say you must demand money, and
11 once you get the money to get to 217 Henry Street, were
12 there any other specific instructions he asked you to
13 do?

14 A I don't know what specific instructions you
15 mean. At that time the situation was very complicated
16 and a lot of things happened.

17 Q How long was your conversation on the phone
18 at the time Ak Guan called you?

19 A Almost was a couple of minutes. For exact
20 how long, I really don't know.

21 Q During that couple of minutes my question is,
22 simply tell me everything that he told you regarding
23 instructions other than to ask for money and have the
24 money delivered to 217 Henry Street.

25 MR. SCHECTER: Objection, your Honor. I

1 Zheng - Defendant - Cross 935

2 believe it's been asked and answered.

3 THE COURT: Overruled. It's cross
4 examination.

5 A He called me several times. Really don't
6 remember.

7 Q Do you recall anything else after that first
8 phone call to the place you were at other than him
9 telling you to call and ask for money and ask to have
10 the money delivered to 217 Henry Street? That first
11 phone call is the only one I'm talking about now. Do
12 you recall anything else; yes or no?

13 A I just call their family and told them that.

14 Q Did he ever tell you how much money to ask
15 for, that first phone conversation you had?

16 A 20,000.

17 Q Do you recall calling up the family after
18 that first phone conversation you had with Ak Guan?

19 A Yes -- what did you say?

20 Q After you spoke to Ak Guan and he gave you
21 those instructions, did you call the family like he
22 requested?

23 A Yes.

24 Q And during that phone conversation did you
25 say on the phone, now, I tell you last night we

1 Zheng - Defendant - Cross 936

2 accompanied two of them, except originally there was
3 supposed to be four people. But since they made a
4 mistake --

5 MR. SCHECTER: Your Honor, I'm
6 objecting. He is reading from something not
7 in evidence.

8 MR. KESSLER: I'm asking a question.

9 THE COURT: Ask the question.

10 MR. SCHECTER: He is reading from
11 something not in evidence.

12 MR. KESSLER: I'm reading from my notes.

13 THE COURT: He can't ask a question by
14 reading something. Overruled.

15 Q I'm at the point now where he said, but they
16 made a mistake, so we ended up with these two. Since it
17 already occurred, don't talk too much. At the time we
18 want 30,000 for each person.

19 Did you call the family and say that to someone on
20 the other end? Do you recall saying that?

21 A Yes, but Ak Guan asked me to say that.

22 Q Did you also say during that conversation --
23 when the woman said, 10,000 U.S. dollars each person --
24 correct, time is up. You better hurry or else I will
25 sell or bury them. That's it.

1 Zheng - Defendant - Cross 937

2 Did you say that to the woman on the other end of
3 the phone; do you recall that?

4 A At that time Qin Guang Zheng said. Other
5 than one sentence I just imitated -- I just learned, you
6 know, from him.

7 Q The question is, did you say that; yes or no?

8 A I made a phone call, but as to specifically
9 what I said, seemed I said that.

10 Q Before I go on, why don't you tell me what
11 other lines now Qin may have said to you during this
12 phone call that you had with the family; that you
13 recall?

14 A Okay. He said that Ak Guan sent him to watch
15 over me and that, asked me to make the phone call.

16 Q Other than saying that, did Qin say anything
17 else to you before or during this first phone
18 conversation you had?

19 A After a while Qin asked me to make another
20 call.

21 Q Well, during this first phone conversation,
22 did Qin say anything else to you other than, I've been
23 here to watch you?

24 A Okay. He said, well, Ak Guan sent him over
25 too and asked me to cooperate with him. Otherwise Ak

1 Zheng - Defendant - Cross 938

2 Guan will kill me.

3 Q Very simply, other than that did he say
4 anything else to you before or during your first phone
5 call; yes or no? Just answer that yes or no.

6 A Yes.

7 Q What else did he say?

8 A Just as I said, Ak Guan sent me over. If you
9 don't cooperate with me, Ak Guan will kill you.

10 Q You said that already. Other than that, for
11 the last time, did he say anything else to you; yes or
12 no?

13 MR. SCHECTER: Your Honor, I'm going to
14 object. It's been asked and answered.

15 THE COURT: Overruled. He hasn't
16 answered the question.

17 MR. SCHECTER: He may not understand
18 because the language --

19 THE COURT: If he doesn't understand, he
20 will tell counsel he doesn't understand.

21 Q The question again is, other than what you
22 said so far, did Qin say anything to you before or
23 during this phone conversation; yes or no?

24 A Yes.

25 Q What else?

1 Zheng - Defendant - Cross 939

2 A Approaching that night, that evening, he gave
3 me a hundred dollars and asked me to go out to buy some
4 food.

5 Q Did he give you any other instructions about
6 the women?

7 MR. SCHECTER: Your Honor, I'm going to
8 object. The question has been asked four
9 times. He's gotten four answers. Whether
10 there is a language communication, he's not
11 going to get an answer whether or not that --

12 THE COURT: How do you know that?

13 MR. SCHECTER: It's four times asked.

14 THE COURT: Your objection is overruled.

15 I will let him probe.

16 Q Did he give you any other instructions as to
17 the women, Mr. Qin Zheng --

18 MR. SCHECTER: When you talk about --

19 Q -- between the time you were at the house
20 until the time and during the first phone call?

21 A No.

22 Q Did you also say during that phone call --

23 THE COURT: Is this the first phone
24 call?

25 MR. KESSLER: First phone call.

1 Zheng - Defendant - Cross 940

2 Q When the woman on the other end asked you
3 when she should give you the money --

4 MR. SCHECTER: Well, your Honor, I'm
5 going to object. We don't know what the
6 woman on the other end --

7 THE COURT: Sustained as to the form of
8 the question.

9 Q Did the other woman say --

10 MR. SCHECTER: I'm going to object. It
11 would be hearsay, whatever she said.

12 THE COURT: This is his conversation
13 with the woman.

14 MR. SCHECTER: We don't know that.
15 There's been nothing introduced into
16 evidence. He is assuming --

17 THE COURT: He already said he had a
18 conversation. Your objection is overruled.

19 MR. SCHECTER: Respectfully except.

20 THE COURT: Glad it's respectful.

21 Q Did the woman say to you on the phone, oh,
22 yes. I understand you. When do I give it to you? And
23 your response being, one or two days.

24 A At that time I really said a lot. I don't
25 remember exactly what I said.

1

Zheng - Defendant - Cross

941

2

Q Do you recall at the end of the conversation,

3

the first phone call, saying to the woman on the other

4

end, correct, but don't be wise yourself. Otherwise, we

5

will kill them.

6

Do you recall saying that at the end of the first

7

conversation?

8

A First phone call?

9

Q The first phone call you had.

10

A I don't remember exactly whether I said that,

11

or Qin Guang said that, or Qin Guang asked me to say

12

that.

13

Q How many phone calls did you make to a woman

14

regarding these two women that were in the apartment?

15

A I don't remember.

16

Q Would it be fair to say there were about 9 or

17

10 phone calls by you to --

18

MR. SCHECTER: Objection.

19

Q -- this home regarding the women?

20

MR. SCHECTER: Your Honor, I'm going to

21

object. He says he didn't remember.

22

THE COURT: He hasn't answered that

23

question. Overruled.

24

A That I cannot recall.

25

Q Would you recall there being close to five or

1 Zheng - Defendant - Cross. 942

2 six phone calls?

3 MR. SCHECTER: Objection, your Honor.

4 THE COURT: Overruled.

5 A At that night I really call several, I made
6 several calls to her and also couple of calls to my
7 friends.

8 Q Did you ever see the other person who was in
9 the apartment or hear the other person in the apartment
10 make any phone calls to the woman you spoke to first?

11 THE COURT: Let's get an answer to that.

12 A What time you mean?

13 Q My question is, at any point in time while
14 you were at the apartment did you make all the phone
15 calls regarding the women, or did Qin make some of the
16 phone calls regarding the women?

17 MR. SCHECTER: Your Honor, I'm going to
18 object. If someone made phone calls outside
19 of his --

20 THE COURT: Well, rephrase the question.

21 Q You said during the phone calls you had, Qin
22 was there, correct?

23 A Yes.

24 Q And he was telling you things before or
25 during these phone calls, correct?

Zheng - Defendant - Cross

943

1

2

A Yes.

3

Q Did you ever hear Qin talk on the phone about

4

a ransom, or did he always just tell you what to say?

5

A He told me.

6

Q So you were the one, your voice was -- on

7

your voice they were using -- strike that.

8

You were the one making the calls regarding the

9

ransom to your knowledge?

10

A Okay. I made several calls, but I really

11

don't know what somebody else made phone, made phone

12

calls or what.

13

Q But you never overheard anyone else on the

14

phone about the ransom?

15

A No.

16

Q Now, you made a second call to the woman

17

regarding the ransom; is that correct?

18

A Yes.

19

Q Before you made the second call did you have

20

any other conversations with Ak Guan?

21

MR. SCHECTER: Your Honor, I'm going to

22

object. What time are we talking about?

23

MR. KESSLER: Between the first phone

24

call and the second call did he have any

25

conversations with Ak Guan?

1 Zheng - Defendant - Cross 944

2 THE COURT: Does that clarify it for
3 you?

4 MR. SCHECTER: Yes.

5 A Okay. As far as I recall, after I made the
6 first call Ak Guan came to the apartment.

7 Q Did Ak Guan give you any specific
8 instructions on what to do regarding these two women
9 when he came to the apartment?

10 A He said he suffered a great financial loss
11 because several people supposed to be coming last night,
12 but they missed. They disappeared, so he asked me to
13 get, get their family, get their money.

14 Q Did he give you any other instructions other
15 than to get their family and get their money?

16 A This question -- could I just go back and
17 think over for a night and answer that to you tomorrow?
18 Cause it's a long time and I really cannot recall.

19 THE COURT: What was that? I'm sorry.

20 THE INTERPRETER: He demanded, he wants
21 to go back in the prison and think over for a
22 night whether he can recall.

23 MR. SCHECTER: Your Honor, I would ask
24 that be stricken.

25 THE COURT: Strike that.

1 Zheng - Defendant - Cross 945

2 Q I will ask my question again. Other than Ak
3 Guan telling you to demand money from his family, did he
4 give you any other specific instructions when he came
5 over to the house the second time?

6 A No, he didn't. No, he didn't say anything.

7 Q Between the first phone conversation and your
8 second phone conversation about the money, did Qin Zheng
9 give you any specific instructions regarding the women?

10 A From the first time, first call to the second
11 call, Qin, yes, he said something to me.

12 Q What did he say to you regarding the women or
13 the ransom?

14 A Could I just answer as much as I can recall?

15 Q What do you recall him telling you between
16 the first phone conversation and the second phone
17 conversation about the women or the ransom?

18 A At first seems like to get there to Market
19 Street other -- then they change their mind to the Henry
20 Street.

21 Q Regarding the phone call you were going to be
22 making, did they give you any specific instructions on
23 what to do or say during that phone call?

24 A Yes.

25 Q Other than ask for the money, what other

1 Zheng - Defendant - Cross 946

2 instructions did they give you, either Ak Guan or Qin
3 Zheng?

4 A Okay. They told me to ask them to put the
5 money in the plastic bag and deliver it to Henry Street.

6 Q Who told you that?

7 A One of them, but I really don't remember who.

8 Q Any other instructions did they give you
9 before you made the second phone call?

10 MR. SCHECTER: Objection, your Honor.

11 It's been asked and answered.

12 THE COURT: Overruled.

13 A Seems nothing.

14 Q Now, when you were making that second phone
15 conversation do you recall putting one of the women on
16 the phone to speak to the other woman on the other end?

17 A Yes.

18 Q And that was your you idea, because no one
19 told you to do that, did they?

20 A When I was making a phone call, it was in
21 Qin's room. He was there.

22 Q My question is, that was your idea to put the
23 other woman on the phone --

24 MR. SCHECTER: Objection.

25 Q -- is that correct?

1 Zheng - Defendant - Cross 947

2 MR. SCHECTER: He just answered that it
3 was Qin's idea.

4 THE COURT: No, he said he was in Qin's
5 room. Objection is overruled. And I suggest
6 you don't do that, Mr. Schechter.

7 A No.

8 Q So, no, meaning it was your idea to put the
9 other woman on the phone?

10 MR. SCHECTER: Objection, your Honor.

11 MR. KESSLER: I don't know what "no"
12 means.

13 THE COURT: Sustained.

14 MR. SCHECTER: There is no question.

15 A It was not my idea.

16 Q Whose idea was it?

17 A Qin Guang Zheng. Qin Zheng suggested she had
18 to speak on the phone.

19 Q Before I go any further, is there anything
20 else that Qin Guang told you before or during this
21 conversation regarding instructions on the second phone
22 call?

23 MR. SCHECTER: Objection.

24 THE COURT: Objection is overruled.

25 A Just that he just said Ak Guan sent him over

1 Zheng - Defendant - Cross

948

2 and asked me to cooperate with him.

3 Q Other than that was there any specific
4 instructions given to you on the second phone
5 conversation other than what you mentioned so far?

6 A Seems like nothing else, but I cannot recall.

7 Q Do you recall during your second phone
8 conversation saying, correct, time is up. You better
9 hurry or else I will sell or bury them. That's it.

10 A I only remember at that time Qin Guang pushed
11 me. He said just, hurry up, hurry up, hurry up, to hang
12 up the phone. But as to what details I said, I cannot
13 recall now.

14 Q Do you recall towards the end of the second
15 phone conversation saying, now don't play any foolish
16 games. If you do anything foolish I have another person
17 over here and we will kill them, right.

18 Do you recall saying that towards the end of the
19 second phone conversation to the woman on the other end?

20 A It was a long time. It's over a year. I
21 cannot really recall.

22 Q If I played tape recording of the
23 conversation to you, would that refresh your memory as
24 to whether or not you said that?

25 MR. SCHECTER: Objection, your Honor.

Zheng - Defendant - Cross

949

THE COURT: Overruled.

A Possibly.

MR. KESSLER: Your Honor, then I would ask for a small recess so I can get the equipment with regard to refreshing the witness's memory.

THE COURT: Let's take a recess to 2 o'clock.

Don't discuss the case among yourselves or with anyone else. Don't let anyone else discuss the case in your presence. Report to where the court officer tells you to report at 2 o'clock. Have a nice lunch.

(The jury left the courtroom.)

THE COURT: 2 o'clock.

(A lunch recess was taken.)

THE CLERK: Case on trial, calendar 7. 3282 of '95, Hai Guang Zheng. Defendant is present. Defense attorney is present. People are present. Official Mandarin interpreter is present.

(The jury is not present.)

MR. SCHECTER: Good afternoon, your Honor.

1 Zheng - Defendant - Cross 950

2 THE COURT: Do we have all the
3 appearances, please.

4 MR. SCHECTER: For the defendant, Donald
5 Schechter.

6 MR. KESSLER: Scott Kessler for the
7 People of the State of New York.

8 THE CLERK: Let the record reflect the
9 presence of an interpreter.

10 Your name, please.

11 THE INTERPRETER: Ye Wan.

12 THE COURT: You're still on the witness
13 stand. Step up.

14 MR. KESSLER: Judge, what I thought we
15 could do is -- the tape is in Mandarin
16 Chinese. Obviously the jury doesn't
17 understand anything on the tape. I don't
18 think it's required the jury have to hear the
19 tape. I would just ask if the defendant
20 could be played the portion of the tape I'm
21 referring.

22 THE COURT: Well, you asked him a
23 question. You asked him whether or not
24 playing the tape would refresh his
25 recollection. He said it might.

1 Zheng - Defendant - Cross 951

2 Do you have any objection to this
3 procedure, Mr. Schechter?

4 MR. SCHECTER: Being listened to outside
5 the presence of the jury, absolutely not.

6 THE COURT: You may proceed.

7 And Mr. Zheng, you're still under oath.
8 Do you understand that?

9 I think you ought to state for the
10 record what this is.

11 MR. KESSLER: Judge, this is a copy of
12 the tape recordings that were recorded on the
13 victims' family's phone. I had a translator
14 translate them into English for me, so I was
15 able to question somebody about them. They
16 are in Mandarin Chinese. The problem, your
17 Honor, I may need the court interpreter's
18 help in order to locate the phrase and the
19 sentence that I used on the tape. I believe
20 he is all ready listen to the tapes at a
21 later time and knows pretty what the tapes
22 are about.

23 THE COURT: You mean at a prior time?

24 MR. KESSLER: At a prior time. Did I
25 say later? If it's possible -- if it's

1 Zheng - Defendant - Cross 952

2 possible, could I have the phrase I used read
3 back to me as to the statement I made?

4 (The court reporter read back the last
5 question.)

6 THE COURT: I hope after this we can
7 expedite this matter.

8 MR. KESSLER: All set. I found the
9 statement on the tape, your Honor.

10 THE COURT: You want to put it over here
11 somewhere. You can step around.

12 Let the record show outside the presence
13 of the jury we found the place on the tape
14 recording which purportedly states what the
15 question was, that question asked to the
16 witness which he said he couldn't remember,
17 meaning the defendant.

18 MR. SCHECTER: Can you just tell him
19 that.

20 THE COURT: The witness has indicated
21 this might refresh his recollection as to
22 whether or not he made the statement asked of
23 him by the District Attorney. And we are now
24 going to play that statement.

25 MR. KESSLER: It's right on the

1 Zheng - Defendant - Cross 953
2 statement. Should I move up behind it a
3 little bit, or go right to it.

4 THE COURT: It's your exhibit. I know
5 you have to turn it up a little bit.

6 (The tape was played.)

7 MR. SCHECTER: Now, if it doesn't
8 refresh his recollection --

9 Q My question to you then is, after hearing
10 that, does that refresh your recollection as to the fact
11 that you said --

12 MR. SCHECTER: Whatever he said. He
13 listened to the tape.

14 Q -- as to what you said to the woman, meaning,
15 don't play any foolish games. If you do anything
16 foolish, I have another person over there. And we will
17 tell them, right.

18 THE COURT: Does that refresh your
19 recollection?

20 A Seems I said that.

21 Q Seems it does, okay.

22 MR. SCHECTER: No, your Honor. I'm
23 objecting to that. He said -- it seems he
24 said that. The question was --

25 THE COURT: But he's been using that

1 Zheng - Defendant - Cross 954

2 term during his whole entire testimony.

3 MR. KESSLER: I would ask this be before
4 the jury, that it is no need --

5 MR. SCHECTER: It does because --

6 THE COURT: It's for the jury to
7 determine whether or not by that statement he
8 is acknowledging that refreshes his
9 recollection.

10 MR. SCHECTER: I would ask the answer be
11 stricken. It's not responsive. He says that
12 that refreshes his recollection. Either it
13 does or does not.

14 THE COURT: I'm ruling that he says it
15 seems so that refreshes his recollection
16 based upon his previous testimony, which he
17 seems to use the term "seem" all the time.

18 Bring the jurors in.

19 A But I cannot make certain.

20 MR. SCHECTER: Your Honor, for the
21 record I'm objecting to this line of
22 questioning on that point.

23 THE COURT: What is the objection?

24 MR. SCHECTER: Your Honor, his answer
25 was not responsive to the question.

Zheng - Defendant - Cross

955

1
2 THE COURT: Well, I'm ruling it was
3 responsive. That's for the jury to
4 determine.

5 (The jury entered the courtroom.)

6 THE CLERK: All jurors are present.

7 Counsel, you waive a more formal reading
8 of the jury attendance?

9 MR. KESSLER: So waived.

10 MR. SCHECTER: So waived.

11 THE COURT: Let the record show the
12 presence of counsel, the defendant, and the
13 interpreter.

14 You may continue.

15 CROSS EXAMINATION

16 BY MR. KESSLER:

17 Q Do you recall now saying to the woman at the
18 other end of the phone, now, don't play?

19 MR. SCHECTER: Objection, your Honor.

20 THE COURT: Please. What is your
21 objection?

22 MR. SCHECTER: Can I have a sidebar?

23 THE COURT: What is your objection?

24 MR. SCHECTER: Your Honor, in rereading
25 the statement that's already been read to

1 Zheng - Defendant - Cross 956

2 him --

3 THE COURT: Well, we are starting after
4 a luncheon recess, so he is certain -- the
5 jury and the witness should be apprised of
6 what he is asking to have his memory
7 refreshed about.

8 MR. SCHECTER: I'm objecting to it.

9 THE COURT: Overruled.

10 Q Do you recall now saying to the woman on the
11 other end of the phone, now, don't play any foolish
12 games. If you do anything foolish, I have another
13 person over there and we will kill them, right.

14 A I cannot make certain which paragraph I said
15 that, but seems lot of things I said.

16 Q Do you recall that being one of the things
17 that you said over the phone; yes or no?

18 A In my impression, I -- seems I didn't say
19 that.

20 Q You're saying you did not say that?

21 A I cannot make certain. Seems I did or seems
22 I didn't. Because I said a lot of things, because Ak
23 Guan -- a lot of things I said was, was the idea of Ak
24 Guan. He asked me to say that.

25 THE COURT: Excuse me. Would you step

Zheng - Defendant - Cross

957

back so the jury could see the witness,
please.

Q Did you ever get an opportunity to listen to
any of the tape recordings of the phone conversations
between the people, a male caller and female caller
about ransom demands?

A Yes, I did.

Q And did you recognize your voice on those
tapes?

A I cannot recognize that. It seems it's not
my voice.

Q You were the one who was calling the women
and talking about how much money you and the ransom
demanded, correct? That was you?

A I said something like that, but the voice
seems not my voice. Can't you feel that?

Q My question is -- forget the tape recording
you heard. Did you make phone calls to the women about
ransom demands, the amount of money to get their
release? Was that you who called? Forgetting what you
heard on the tape.

A Yes.

Q Okay. Do you recall in that second
conversation telling them how to package the money in a

1 Zheng - Defendant - Cross 958

2 tea can?

3 A Seems I said that, but it seems -- it seems
4 it's not in the second dialogue.

5 Q I'm not interested in what you heard on the
6 tape. My question is simply, when you were at this
7 apartment with the two females, did you make a phone
8 call and during that conversation talk about how they
9 should package the money?

10 A Yes.

11 Q Didn't you also tell them during that
12 conversation that they should use 100 dollar bills?

13 A At that time did Qin tell me that? I really
14 forget. Right. Right. Right. He told me that.

15 Q So this was another something that Qin told
16 you about before or during the second phone
17 conversation. Is that what you're telling us?

18 A Right, but I cannot recall exactly which
19 telephone conversation. Qin just told me to do that.

20 Q Do you recall towards the end of the second
21 phone conversation saying to the woman: Now you be a
22 little wiser. Don't --

23 MR. SCHECTER: Your Honor --

24 MR. KESSLER: I haven't even finished
25 the question.

1 Zheng - Defendant - Cross 959

2 MR. SCHECTER: Can I have a sidebar?

3 THE COURT: Yes, you can have a sidebar.

4 (Sidebar discussion off the record.)

5 THE COURT: Objection is overruled.

6 Q Do you recall in the second conversation
7 telling the woman on the other end, now you must be a
8 little wiser. Don't let any police appear. If police
9 appear, I will let you see what bad things can happen to
10 you.

11 A Yes.

12 Q So you're concerned at this point in time
13 that the woman on the other end of the phone may have
14 contacted the police, and that's why you said that,
15 correct?

16 A Yes, yes. But could I -- could you tell me
17 some of the stuff that I said or something?

18 Q So your answer is yes?

19 THE COURT: Excuse me. You're blocking
20 off the jurors. They have to be able to see
21 his face.

22 A Yes, but because I was afraid that police
23 might follow us, so I said that.

24 Q You were afraid the police may have some
25 contact with this case and you were afraid of the

1

Zheng - Defendant - Cross

960

2

police?

3

A Okay. I was certainly afraid of the police.

4

If the policeman knows that, Ak Guan will think I

5

reported to the police.

6

Q During your phone conversation with the woman

7

did you ever tell the woman on the other end of the

8

phone, if you talk like this, it's going to be very

9

difficult. I am telling you. In America there is no

10

such thing as -- they don't let people free if they have

11

received the things?

12

Did you say that to the woman on the other end of

13

the phone?

14

A Yes.

15

Q Did you also say: You think about it. If

16

you are playing foolish games, I will not negotiate any

17

more. I will go right away and kill them and you can

18

read about it in the newspaper?

19

A At that time seems like Qin said that, or

20

maybe Qin asked me to say that. Right. Okay. Qin

21

Guang Zheng said it would be better to be as tough to

22

them as possible.

23

Q So after Qin said to you it would be better

24

to be as tough as possible, you started throwing in

25

these things for you to sound tough on the phone; is

Zheng - Defendant - Cross

961

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that what you're telling us?

MR. SCHECTER: Objection to "throwing
in."

THE COURT: Sustained.

Q Did you throw in the part about -- in America
there is no such thing as they don't let people free if
they receive the things. Did you throw that in?

MR. SCHECTER: Objection to the term
"throw in."

THE COURT: Change that "throw in." Did
you say that?

Q Did you add that and say that in the
conversation on your own?

A I really cannot -- I really cannot recall,
but during the phone Qin said a lot. I don't know
whether I said it or he asked me to say that.

Q During your phone conversations with this
woman did there come a point in time where you became
suspicious that the police had been contacted?

A Yes.

Q And you warned her not to contact the police,
correct?

A Yes, but as to that I just drove out and told
her over the phone. Qin does not know that.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Zheng - Defendant - Cross

962

MR. KESSLER: I didn't understand the
interpreter, your Honor. Can the interpreter
repeat that?

THE COURT: Let the court reporter.

(The court reporter read back the
requested answer.)

Q Did you tell the woman on the other end of
the phone that if they paid the money that you would not
kill the women?

A Did I say that?

Q That's my question.

A No.

Q Did there come a point in time when one of
the women again was on the phone and you'd given her the
phone to speak to her family? This is now the second
time.

A Seems not.

Q You don't recall her coming to the phone a
second time?

MR. SCHECTER: Objection, your Honor.
Just asked and answered.

THE COURT: Well, he is probing.
Overruled.

A I remember she talks over the phone with her

1

Zheng - Defendant - Cross

963

2

family member, but I don't remember how many times.

3

Q Do you remember her pleading with her family

4

for them not to talk so much because it's making you

5

angry?

6

MR. SCHECTER: Objection.

7

THE COURT: Overruled.

8

A Well, at that time Ak Guan and the Qin told

9

me when -- told me that when I make telephone

10

conversations, it would be better not to extend over a

11

minute.

12

Q And when did they say that to you? When was

13

that instruction?

14

A Before I make the first telephone call that

15

night.

16

Q Do you recall calling the woman again and

17

trying to convince her to use a car service to drop the

18

money off?

19

A Yes, I was afraid that that area was not

20

safe, so I just asked her to take a car service.

21

Q Now, you said that you were concerned that

22

area was not safe.

23

A Yes.

24

Q You were afraid that she may get robbed on

25

the way?

1 Zheng - Defendant - Cross 964

2 MR. SCHECTER: Your Honor, may we
3 approach for a moment?

4 THE COURT: Step up.

5 (Sidebar discussion off the record.)

6 Q How much money of the 15,000 that was going
7 to be delivered were you concerned was going to be taken
8 that was your share?

9 MR. SCHECTER: Objection, your Honor.
10 It's an ambiguous type of question.

11 THE COURT: Overruled. If the witness
12 doesn't understand, he will state it.

13 A Well, Ak Guan also told me that -- just don't
14 deliver. The pickup guy is not aware how much money is
15 there. He in fact he does not know whether there is any
16 money in it, so I also told the woman on the phone that
17 the pickup guy does not know anything about the
18 incident. He does not know there is any money in the
19 plastic bag.

20 Q Would you agree with the statement that
21 during these phone conversations you tried to scare the
22 woman on the other end of the phone to give the money
23 over?

24 A Well, at first I did like that, but toward
25 the end I didn't, because Ak Guan said if there will be

1 Zheng - Defendant - Cross 965

2 no money in the bag, so if we get a bag we will send a
3 person there.

4 Q When --

5 A Moreover, I made several calls. And telling
6 her if anyone knows there is money in it, she'll not
7 accept it --

8 MR. KESSLER: Judge, again this has gone
9 beyond my question. I ask it be stricken.

10 THE COURT: It was not responsive, so
11 strike it.

12 Q When you're on the phone with this woman you
13 tried to sound tough and threatening to her; yes or no?
14 Without mentioning Ak Guan's name.

15 MR. SCHECTER: Objection.

16 Q Did you try to sound threatening to her?

17 THE COURT: Overruled.

18 A Yes, at first.

19 Q And you threatened to kill the women if she
20 did not deliver the money, true?

21 MR. SCHECTER: Your Honor, asked and
22 answered.

23 THE COURT: Overruled.

24 A At first it seemed I did so, at first. I
25 really cannot make certain. I cannot recall. I did

1 Zheng - Defendant - Cross 966

2 like that, it seems.

3 Q Ak Guan leaves the apartment you're in and
4 you're left with Qin, correct?

5 A At last.

6 Q You were relieved when he left because he is
7 no longer a threat to you, correct?

8 A But he asked Qin to watch over me.

9 Q You left the apartment at times to make phone
10 calls by yourself, correct?

11 A At first I was making phone calls inside and
12 Qin watched over me. Later on when I know some internal
13 affairs of Ak Guan, I just left and made phone calls
14 outside.

15 Q And when you made the phone calls outside, no
16 one was holding a gun to your head, were they, at that
17 point in time?

18 MR. SCHECTER: Objection.

19 THE COURT: Overruled.

20 A Right.

21 Q And no one was around you at that point in
22 time, you were by yourself outside making that phone
23 call, correct?

24 A Yes.

25 Q And at that point you never called the police

1 Zheng - Defendant - Cross 967

2 to tell them anything about what was happening here at
3 that apartment, correct?

4 A Yes, right.

5 Q When you're outside --

6 THE COURT: The witness is saying
7 something else.

8 A What I was -- when I was out, I just called
9 the pickup, a guy, and said, well, if there is no money
10 in it, if somebody there to pick up we have some ways to
11 send the bag.

12 Q When you were saying that outside, Qin was
13 not standing next to you, correct?

14 A My purpose was not let him know.

15 Q I'm sorry?

16 A My purpose was not to let him know.

17 Q So you didn't want Qin to know when the money
18 was to be delivered to 217 Henry Street?

19 A My purpose was not to let his family know
20 that Ak Guan send somebody to pick up the money. That
21 guy does not know there is any money in it.

22 Q My point is you can make phone calls without
23 Qin knowing anything about them, correct?

24 A Yes.

25 Q The women that were in your apartment, they

1 Zheng - Defendant - Cross 968

2 never showered, did they?

3 A When I was inside I didn't see that.

4 Q You didn't see them making any phone calls
5 that you didn't give them permission to make, correct?

6 A When I was making phone calls inside a room,
7 it was Qin who ordered me to do that. Without his
8 consent, I cannot make any calls.

9 THE COURT: Strike that. It's not
10 responsive. Listen to the question, please.
11 Repeat the question.

12 MR. KESSLER: I'd ask if we can --

13 THE COURT: The court reporter read the
14 question, please.

15 (The court reporter read back the
16 requested question.)

17 A Right.

18 Q Did Qin --

19 THE COURT: Wait a minute.

20 A But I didn't say -- I didn't give them
21 permission to make calls.

22 Q Did Qin ever -- did you ever see a gun when
23 you were down in the basement at all?

24 A That question -- at that time I didn't notice
25 that.

Zheng - Defendant - Cross

969

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q So you didn't notice any gun --

A Seems Qin -- seems under the pillow there is one. But I'm not sure.

Q What made you think that under the pillow there was a gun?

MR. SCHECTER: Objection as to that.

THE COURT: Overruled.

A At that time I saw a black handle, a little bit black handle, but I am not sure. I cannot make certain.

Q Qin never held a gun on you or showed you any gun, did he? Is that your testimony?

A Yes.

Q Ak Guan never held a gun to you personally at any time, did he?

A No.

Q One of your responsibilities was to make sure that the women stayed in the apartment and did not leave, correct?

A My responsibility -- I don't have such responsibility.

Q Did you have any responsibilities at all during this entire situation between March 31st and April 2nd?

1 Zheng - Defendant - Cross 970

2 A He just asked me to make phone calls. I'm
3 only responsible for that.

4 Q Well, you were going to drop off the women
5 and let them go at the end, correct?

6 A Yes.

7 Q And you were the one making phone calls for
8 the ransom money, correct?

9 A Yes.

10 Q And you were in the house where the women
11 were being kept, correct?

12 A Yes.

13 Q And you never tried to help these women
14 escape from this house, did you?

15 A I thought -- but at that time there is really
16 no way to help them to escape. I just tell -- I just
17 told them that, don't worry. I will finally set them
18 free. Don't worry. Don't be afraid. ✓

19 Q At the same time you're saying that, you're
20 telling the woman on the other end of the phone you're
21 going to kill them if they don't give them the ransom
22 money, correct?

23 A At first when I went Qin was beside me. At
24 first.

25 Q Did your parents ever call you during the

1 Zheng - Defendant - Cross 971

2 time between March 31st and April 2nd and tell you they
3 felt their lives were in danger?

4 MR. SCHECTER: Objection, your Honor.

5 THE COURT: Sustained.

6 Q Did you call your parents at all between
7 March 31st and April 2nd, 1995?

8 MR. SCHECTER: Your Honor, I'm going to
9 object to -- this asked for facts not in
10 evidence as to whether his parents even have
11 a phone.

12 THE COURT: Overruled.

13 A Seemed I didn't.

14 Q There came a point in time where you left the
15 apartment with Qin Zheng and the two women, correct?

16 A Yes.

17 Q And this was after you got word that the
18 \$15,000 had been delivered to an apartment on Henry
19 Street, correct?

20 A Yes.

21 Q And when you leave the apartment you locked
22 the door behind you, correct?

23 A I left first. I'm the first one.

24 Q Who locked the apartment?

25 A I'm not sure, but possibly it was Qin.

1 Zheng - Defendant - Cross 972

2 Because I left first. I didn't notice.

3 Q You had the keys on the key ring to your
4 car -- to the door, didn't you?

5 MR. SCHECTER: Objection.

6 THE COURT: Overruled.

7 A Yes. Ak Guan left that before he left.

8 Q So the keys to the door were on the same key
9 ring as the keys to the ignition to your car, correct?

10 MR. SCHECTER: Objection. He is
11 assuming facts not in evidence.

12 THE COURT: Overruled.

13 A I forget as to whether we get on a car, but
14 Ak Guan left that.

15 Q When you leave the apartment you go into your
16 car to drive away with the two women and Qin, correct?

17 A Yes.

18 Q Your car is stopped very shortly after you
19 leave to drive away?

20 A Yes.

21 Q You're arrested and a police officer who
22 speaks your language interviews you, correct?

23 MR. SCHECTER: What time are we talking
24 about, Judge? Where and what time? I'm
25 objecting to the question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Zheng - Defendant - Cross

973

THE COURT: Overruled.

A The answer is yes.

Q And when you speak to this detective you know he is a member of the New York City Police Department, correct?

A At that time I didn't know. The only thing I knew is he's Chinese.

Q Did you not know that he was a police officer when he spoke to you?

THE COURT: Maybe you better set forth when you're talking about.

Q Did you speak to Detective Ng, the Asian detective that testified in this courtroom?

A Yes.

Q And you spoke to him in a police station where there were police officers around and jail cells, correct?

A What? Jail?

Q Where you spoke to him. Were you being held in a jail cell before you spoke to him, a place where you could not escape?

MR. SCHECTER: Objection.

THE COURT: Overruled.

A Yeah, in a cell.

1 Zheng - Defendant - Cross 974

2 Q He asked you questions about where you were
3 born, how tall you were, your name, correct?

4 A Yes.

5 Q Did you know that the police -- did you know
6 that the people around you were police officers and not
7 civilians?

8 A At that time I thought that he is probably an
9 interpreter.

10 Q When you spoke to him you said he asked you
11 why did you kidnap and rape the women, correct?

12 A Yes.

13 Q And you told him that you did kidnap the
14 women but you did not rape them, correct?

15 MR. SCHECTER: Objection, your Honor.

16 That was not his testimony.

17 THE COURT: Well, that's for the jury to
18 determine.

19 A I just told him that a friend of mine asked
20 me to pick up a friend in the airport. I didn't rape
21 them. By that he insulted me.

22 Q Didn't you say on direct examination, when
23 Mr. Schecter asked you, that your response to Detective
24 Ng was not, I just picked up a friend at the airport,
25 but you said, I really don't know what happened.

1 Zheng - Defendant - Cross 975

2 A Because when he asked me questions he only
3 asked yes or no. Sometimes I cannot really explain.

4 Q Did you tell Detective Ng anything at all
5 about the fact that you were forced to do this against
6 your will; yes or no?

7 A What do you mean? You mean anything? Does
8 that mean everything? I just say some of that. Ak Guan
9 forced me to do some of that.

10 Q You told Detective Ng that Ak Guan forced you
11 to do something?

12 A At first I told him that Ak Guan deceived me
13 into going to the airport to pick up a friend. Later on
14 I said he forced me to demand a ransom money.

15 MR. KESSLER: Can I see the statement A,
16 B, C, and D. I think it's 9.

17 THE COURT: 12.

18 MR. KESSLER: 12, I'm sorry.

19 THE COURT: Yes.

20 MR. KESSLER: 12.

21 (Shown to A.D.A.)

22 Q Can you read Chinese?

23 A Yes.

24 Q Did you tell Detective Ng that somebody named
25 Ye Kong (phonetic) you met at the airport?

1 Zheng - Defendant - Cross 976

2 A At that time I said Ye Guan (phonetic), not
3 Ye Kong.

4 Q Did you tell Detective Ng that Ye Kong asked
5 to you stop a car service?

6 A At that time I really didn't say that. At
7 that time he didn't let me say that.

8 Q He stopped you from saying that?

9 A Yes.

10 Q And how did he stop you from saying that, by
11 beating you?

12 A No, he didn't beat me.

13 Q Did he --

14 A But he was in a very tough manner. And he
15 scolded me.

16 Q His scolding of you was when he asked you
17 whether or not he raped the women?

18 A He was in a tough manner. Said, fuck you.
19 You raped them and kidnapped them and you denied
20 everything. Later on another policeman come and strike
21 me.

22 Q When you say that tough manner, that's the
23 same manner you talked about that you said Ye Kong said
24 to Qin in front of you?

25 THE WITNESS: Can I ask him to repeat?

Zheng - Defendant - Cross

977

Can I ask him --

THE COURT: Repeat the question or rephrase it.

MR. SCHECTER: Are you talking --

THE WITNESS: I know I didn't -- I didn't catch one word the interpreter was asking. Could he rephrase the question.

Q You said on Mr. Schecter's direct examination, when he asked you whether or not you saw any threats being handed out by Ye Kong, you said the threat that you saw was when he spoke roughly to Qin Zheng. Do you recall saying that?

A As far as I remember, in the police station I got a lot of word to say, but he constantly interrupted me.

Q If you can answer this question yes or no, answer it yes or no. If you can't, let me know.

I simply want to know when you spoke to Detective Ng did you ever mention anything about you being forced to do this kidnapping when you spoke to Detective Ng?

MR. SCHECTER: Your Honor, I'm going to object. It was asked about five minutes ago and he gave an answer.

THE COURT: I will permit it.

1 Zheng - Defendant - Cross 978

2 Overruled.

3 A At that time as far as I remember I didn't,
4 because I don't have the time to speak.

5 MR. KESSLER: I have nothing further.

6 THE COURT: Do you have any --

7 MR. SCHECTER: No.

8 THE COURT: Okay, step down.

9 (The witness left the witness stand.)

10 THE COURT: Do you have any other
11 witnesses?

12 MR. SCHECTER: Defendant rests.

13 THE COURT: People have anything else?

14 MR. KESSLER: Could I approach for one
15 minute?

16 (Sidebar discussion off the record.)

17 THE COURT: Let's take a short recess.

18 Don't discuss the case among yourselves or
19 with anyone else. Don't let anyone discuss
20 the case with you in your presence. You can
21 step out.

22 (The jury left the courtroom.)

23 THE COURT: The jury has left.

24 MR. KESSLER: I will need about 5, 10
25 minutes.

Zheng - Defendant - Cross

979

THE COURT: Take the defendant back inside. Don't take him downstairs though.

(A short recess was taken.)

THE CLERK: Case on trial. All parties are present in the absence of the jury. The defendant is present.

THE COURT: Would you give your appearances, please.

MR. KESSLER: Scott Kessler for the People of the State of New York.

MR. SCHECTER: Donald Schecter for the defendant. My client is also present in the courtroom with the official interpreter.

MR. KESSLER: Your Honor, I am going to rest. I'm not putting on any rebuttal.

THE COURT: Both sides rest.

MR. KESSLER: Judge, could I approach with counsel for one moment?

THE COURT: Yes.

(Sidebar discussion off the record.)

THE COURT: All right. Would you bring the jurors in, please.

(The jury entered the courtroom.)

THE CLERK: All jurors are present.

1 Zheng - Defendant - Cross 980

2 Counsel, do you waive a more formal
3 reading of the jury attendance?

4 MR. KESSLER: So waived.

5 MR. SCHECTER: So waived.

6 THE COURT: Ladies and gentlemen, both
7 sides have rested, so we have heard all the
8 testimony that we are going to hear in this
9 case. Some of you have told me that they
10 have plans for the July 4th weekend. So we
11 have to have what we call a charge conference
12 with the attorneys and the defendant will be
13 here tomorrow and I will give them my
14 proposed charge and we will have requests for
15 further charge or exceptions to my charge.

16 That will take up most of tomorrow. So
17 I'm going to recess the case until Monday
18 morning. That's July 8th at 9:30 in the
19 morning. Now, please, it's very important at
20 this point that you not discuss this case
21 among yourselves or with anyone else. Anyone
22 tries to discuss this case with you or in
23 your presence, tell them the Judge said you
24 cannot discuss the case; nothing about it.
25 This is a crucial part of the case, and

Zheng - Defendant - Cross

981

please do that.

Now I'm also going to ask you to avoid reading any items that you may see in the newspaper concerning this trial. There may be things in articles like that that did not come out during the course of the trial. Do not visit the location you have heard about during the course of the trial. I have given you the reasons for that. Now the court officer will tell you what to bring with you on Monday morning and please be as prompt as you can Monday morning, 9:30. Have a very nice July 4th weekend and I'll see you on Monday morning.

(The jury left the courtroom.)

THE COURT: The jury has left. Tomorrow morning, 10 o'clock, we will have a charge conference and I'll see you then. The matter is recessed to tomorrow morning at 10 o'clock. Let the record note all motions will be made tomorrow. Defendant has reserved his right to make motions until tomorrow.

* * * * *

982

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-25

-----X

THE PEOPLE OF THE STATE OF NEW YORK	Indictment
-against-	No. 3282-95
HAI GUANG ZHENG,	KIDNAP1
Defendant.	Trial

-----X

July 3, 1996
125-01 Queens Boulevard
Kew Gardens, NY 11415

B E F O R E:

HONORABLE STANLEY B. KATZ,
Justice, and a jury

A P P E A R A N C E S:

(Same appearances as previously noted.)

DEBRA DUNN
Official Court Reporter

THE CLERK: This is page 2, indictment
3282 of '95, Hai Guang Zheng. Case on trial
continues. The defendant is present. The
official Mandarin interpreter is present.

Counsel, your appearance, please.

MR. SCHECTER: For Hai Guang Zheng,
Donald Schecter, 10 Cutter Mill Road, Great
Neck, New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

983

THE CLERK: People.

MR. KESSLER: Scott Kessler for the
People of the State of New York.

MR. SCHECTER: Your Honor, first, before
we do anything, there was an article in
today's Newsday. I don't know whether your
Honor had an opportunity look at it or not.

THE COURT: I have seen it.

MR. SCHECTER: I note that my policy is
I never come to the newspapers on any ongoing
trial. And as such, that is reflected in the
article. And there are certain statements in
the article that are clearly inaccurate,
showing my client was a member of a gang.
This is in his confession, which has not been
shown to the jury up to this stage and has
not been read to the jury, your Honor. And
whether the jury reads it or not, I'm going
to have to move for a mistrial, because it
gives the implication my client is a gang
member. There's been no testimony whatsoever
my client is a gang member.

Or from this where it could be stated --
where it says, his own confession, they ended

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

984

up seizing a newlywed couple flying in from San Francisco. My client would have never said that. The testimony was they came from Los Angeles. Second I think the testimony was they were married for over four years, your Honor.

I do see the Assistant District Attorney did speak to the reporter, cause it does say what he has maintained, your Honor. And I don't know whether he got that information from him or not. That would be completely biased toward my client, and as such would be prosecutorial misconduct. If that becomes the case, I would ask you for a dismissal of the indictment with prejudice. If not, I would ask for a mistrial.

THE COURT: Yes.

MR. KESSLER: Judge, the article seems to degrade my complainants, not the defendant. It seems to indicate my complainants were smuggled into this country by some gang and they were the ones here illegally. I think if your Honor recalls the testimony, my complainants were here legally.

Proceedings

985

1
2 If it hurts anyone, it hurts my complainants'
3 reputation.

4 THE COURT: I'm not going to comment on
5 the contents of the article. I have
6 instructed this jury not to read any articles
7 which pertain to the case, or anything in the
8 media pertaining to the case. And based upon
9 that I'm going to deny your application.

10 MR. SCHECTER: Your Honor, then what I
11 would secondly ask is Monday before we start,
12 ask the jurors if anyone saw any articles
13 since they recessed concerning this matter.

14 THE COURT: Well, I will do something to
15 that effect. I may tell them if any of them
16 have read the articles they are to totally
17 disregard anything they have seen and base
18 their decision in this case solely on what
19 they heard in the four walls of this
20 courtroom.

21 MR. SCHECTER: Your Honor, depending on
22 what is said by this jury, I will then deal
23 with it at this time.

24 THE COURT: It depends on what I will
25 ask the jury, or tell the jury?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

986

MR. SCHECTER: Depending on what any of the replies are.

THE COURT: I didn't say I would inquire of the jury. I instructed them not to read anything. This is an intelligent jury and I believe they won't read anything.

MR. SCHECTER: I would ask your Honor to go one step further and ask if anyone did read the article.

THE COURT: I will consider that.

MR. SCHECTER: Okay, your Honor. You want me to make my motions first. ✓

THE COURT: Yes, why don't you make your motions first.

MR. SCHECTER: Your Honor, at the end of the entire case I would move to dismiss the -- your Honor, what I would like to do, since we are dealing here with counts -- counts 1 through 8 are all in pairs. I'd like to address the pairs together, your Honor.

THE COURT: Whatever you want.

MR. SCHECTER: Your Honor, as to the first two counts of the indictment,

Proceedings

987

1
2 kidnapping in the first degree, that the
3 defendant abducted Liu Yan Wu or Jin Hao Liu
4 with intent to compel a third person to pay
5 or deliver money or property as ransom, I
6 believe the People have failed to meet their
7 burden of proving him guilty beyond a
8 reasonable doubt. I don't believe the
9 testimony was such that would show that he
10 abducted them or was acting aided by another
11 with intent to compel a third person to pay a
12 ransom. I would also state as to these two
13 crimes I'm going to ask your Honor to charge
14 duress as an affirmative defense and I
15 believe that --

16 THE COURT: You're making motions now.
17 Stick to your motions.

18 MR. SCHECTER: Okay, your Honor. I
19 would state that the People have failed to
20 sustain their burden as to those two charges.

21 THE COURT: Do you want to be heard on
22 that, Mr. Kessler?

23 MR. KESSLER: Regarding the basic motion
24 by defense counsel to dismiss the counts,
25 after the end of the case I have --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 988

THE COURT: He is doing it right now.
He is concentrating on the first two counts.

MR. KESSLER: Right, I just rely on the
evidence. Your Honor has heard the same
arguments I made at the end of the People's
case. I don't think anything is changed.

THE COURT: You didn't make any
arguments at the end of the People's case.

MR. KESSLER: Then I will rely on the
entire record before this Court.

THE COURT: Go ahead, Mr. Schecter.

MR. SCHECTER: Your Honor --

THE COURT: I understand you are going
to move to dismiss every count in the
indictment.

MR. SCHECTER: Yes, I have to do it
specifically, or else the Appellate Division
said it's waived if I don't get specific.

As to the 3rd and 4th counts, I believe
the evidence was insufficient beyond a
reasonable doubt to show that the two
individuals were abducted for more than 12
hours with intent to violate -- that the two
individuals were abducted and restrained for

Proceedings

989

1
2 a period of more than 12 hours with intent to
3 violate them sexually, your Honor. I believe
4 the testimony does not show that either my
5 client or the other individual who was
6 there -- there is no scientific evidence
7 linking him to any rapes. There is no DNA
8 evidence or anything else.

9 THE COURT: Well, does the law require
10 scientific evidence?

11 MR. SCHECTER: No, but your Honor could
12 rule on that.

13 THE COURT: I believe there is ample
14 testimony by the witnesses themselves they
15 were sexually assaulted by the two
16 defendants.

17 MR. SCHECTER: Well, I'm moving the
18 evidence was insufficient.

19 THE COURT: That's denied. That's a
20 question for the jury to decide.

21 MR. SCHECTER: Your Honor, under the 5th
22 and 6th count of the indictment, kidnapping
23 in the first degree, that with intent to
24 terrorize the two females. I don't believe
25 the testimony was sufficient to show that

1

Proceedings

990

2

either one of the two females was terrorized.

3

The testimony was such from them that they

4

were cooking food, your Honor, and as such

5

there was no terrorization.

6

THE COURT: That's denied. There is

7

ample testimony to give to the jury.

8

MR. SCHECTER: Your Honor, as to the

9

next counts, which would be 7 and 8, the

10

crimes of rape in the first degree as to the

11

two females, I don't believe the evidence was

12

sufficient beyond a reasonable doubt to show

13

that my client engaged in sexual intercourse

14

with them. The other person may have done

15

that, your Honor, but he is not charged with

16

acting in concert on these crimes. I believe

17

the evidence is insufficient to show he

18

sexually abused or raped either of the two

19

women.

20

THE COURT: That's denied. I believe

21

there is testimony, testimony by both, he

22

did, and that's for the jury to decide.

23

MR. SCHECTER: Your Honor, under the 9th

24

count of the indictment, which would be

25

kidnapping in the second degree and the

Proceedings

991

1
2 abduction of Guo Bang Liu. I believe
3 Mr. Liu's testimony has a description of the
4 person who kidnapped him, which does not
5 coincide with my client's testimony. As
6 such, his testimony was insufficient as a
7 matter of law beyond a reasonable doubt to
8 show that my client abducted Guo Bang Liu.

9 THE COURT: That's denied. I believe
10 some of the testimony was your client gave
11 him quarters after he dropped him off the car
12 at the end of the bridge. That's for the
13 jury to decide.

14 MR. SCHECTER: The next two counts, your
15 Honor, sexual abuse in the first degree, in
16 that my client subjected the two females to
17 sexual contact by touching her breasts with
18 his hand by means of forcible compulsion. I
19 believe there's been no testimony to that.
20 As such, there was no forcible compulsion by
21 my client as to those charges.

22 THE COURT: That's denied. I believe
23 there was testimony to that effect and it's
24 for the jury to decide.

25 MR. SCHECTER: And I believe the last

1

Proceedings

992

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

count of the indictment, your Honor, which is criminal possession of a weapon in the second degree. I believe the evidence was insufficient as a matter of law beyond a reasonable doubt to show that my client, or the other defendant, possessed a firearm, which has not been introduced into evidence to show it was an operable firearm. There's been no testimony from either of the two females at any time they identified the firearm that was admitted into evidence as being the firearm that was used against them. As such, there is no showing the firearm that may or may not have been used was a loaded operable firearm.

THE COURT: There was a firearm recovered from the apartment, and there was testimony there was a firearm, at least one, in the apartment at the time that the two females were there. And that's for the jury to decide. That's denied.

MR. SCHECTER: Okay. That takes care of the motions at the end of the entire case.

Now, I would specifically ask for the

Proceedings

993

1
2 following. Prior to my client taking the
3 witness stand -- I believe one day either
4 last week or the beginning of this week -- we
5 had a conference with Mr. Tivin, your law
6 secretary. And he showed me your standard
7 charge, your Honor. We went over that.

8 THE COURT: You mean the entire charge?
9 The entire charge?

10 MR. SCHECTER: The entire charge. The
11 entire charge that he was preparing. ✓

12 THE COURT: What we were proposing --

13 MR. SCHECTER: At that stage we went
14 over that. Any comments or corrections I
15 asked were taken care of at that time, your
16 Honor. So as to that part of the charge, I
17 have no objection, your Honor.

18 THE COURT: Any further requests as to
19 that?

20 MR. SCHECTER: Yes. I would request
21 based on the testimony of my client, your
22 Honor, I would first ask for concerning the
23 statement's voluntariness or involuntariness
24 of the statement, your Honor. I believe this
25 morning also --

1

Proceedings

994

2

THE COURT: Well, I proposed a charge on

3

that.

4

MR. SCHECTER: The proposed charge on

5

involuntariness of the statement, your Honor.

6

There was a conversation between Mr. Kessler,

7

myself, and Mr. Tivin. And I believe that's

8

been resolved to our satisfaction.

9

THE COURT: Fine.

10

MR. SCHECTER: Okay, your Honor.

11

THE COURT: Well, any further exceptions

12

or objections to that portion of the charge?

13

MR. SCHECTER: No, your Honor. My

14

objections to that have been addressed by

15

Mr. Tivin and that --

16

THE COURT: You see what we propose as

17

to that?

18

MR. SCHECTER: And they have been

19

included, what I was asking for. And my last

20

request would be that your Honor charge the

21

affirmative defense of duress. I believe

22

based on my client's testimony we have made ✓

23

out a claim as to all of the kidnapping

24

charges, your Honor, and the weapon charge,

25

your Honor, that my client was forced to do

Proceedings

995

1
2 this under the threat of death of his family
3 in China and harm to him.

4 In fact, his testimony was such that at
5 one time during this Qin Zheng threatened to
6 kill him if he did not continue making phone
7 calls and keeping to the women, your Honor.
8 So I believe that we have made out an
9 affirmative defense of duress. I would ask
10 your Honor to charge the jury as to that.

11 THE COURT: You want to be heard as to
12 that, Mr. Kessler?

13 MR. KESSLER: I don't recall an
14 immediate threat made to this defendant
15 during his testimony of anybody threatening
16 him. My understanding of his testimony was
17 if he did not do what this man says that in a
18 future date his family would be killed, in a
19 future date he would be --

20 THE COURT: You're addressing the
21 imminency of the threat, whether they posed
22 imminent danger.

23 MR. KESSLER: Correct. My understanding
24 of the law, your Honor -- and I have some
25 case law, People -v- Lane, People -v- Amato,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

996

and People -v- Brown, which I will hand up to the Court -- all the cases indicate the charge itself. If you read the charge --

THE COURT: I'm familiar with those cases.

MR. KESSLER: -- say the defense of duress may not be used when the force or threat used is incapable of immediate realization. And I believe in this case the defendant has testified the reason he went through with this kidnapping was because he was in fear at a future time his parents may be killed in China, and at a future time he may be sent from the United States back to China. Therefore, under the case law and the charge itself, I would ask this Court not to charge duress since there is no immediate threat.

THE COURT: I'm inclined to charge as you requested. I don't believe that under the duress sections of the law that this is covered by it. What your client stated, he was free to go any time he wanted to. He had a phone. He left the place many, many times.

Proceedings

997

1
2 He could have called the police. He could
3 have left completely. And it does not cover
4 the requisites of the duress charge. ✓

5 MR. SCHECTER: Your Honor, I believe the
6 testimony was such that he didn't know his
7 parents were in China. That was known by Ak
8 Guan. And as such, your Honor, he doesn't
9 know whether it's going to be -- whether he
10 has people right there --

11 THE COURT: Mr. Schecter, your client
12 was brought into this country -- the way I
13 understand his testimony -- by this gentleman
14 illegally for a sum of \$30,000. And the
15 problem that he had, that he talks about in
16 his testimony, was he didn't pay him all the
17 money. It was part of that problem. And
18 because he didn't pay him all the money, he
19 still owed him \$12,000. That's why he
20 cooperated with the other person, if that's
21 the reason why he did. And that's one of the
22 exceptions to the duress charge, if he is
23 part of the incident.

24 MR. SCHECTER: If your Honor please, I
25 believe his testimony was such if he did not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

998

cooperate that Ak Guan was going to have his
parents killed.

THE COURT: Because he owed him \$12,000
from that deal.

MR. SCHECTER: That was not the
testimony.

THE COURT: Well, that's the way I
understood it. Are you saying he didn't owe
this fellow \$12,000?

MR. SCHECTER: I'm not saying he didn't
owe, but he was told if he does not cooperate
with the kidnapper, his parents would be
killed.

THE COURT: He could have cooperated
with the police. He had cellar phones. He
made calls all over the place. He could have
had the man arrested.

MR. SCHECTER: That does not mean --

THE COURT: I don't believe that's
duress under the law. You have an exception.

MR. SCHECTER: Can I complete and make
my record?

THE COURT: You made your record.

MR. SCHECTER: I don't believe I

Proceedings

999

1
2 finished making my record.

3 THE COURT: Go ahead. The testimony
4 speaks for itself.

5 MR. SCHECTER: But his testimony was
6 such that the parents would be killed in
7 China and the police -- there would be no way
8 for the police to protect them.

9 THE COURT: He didn't know that. He
10 doesn't call the police and get the police to
11 arrest this man who was very available to be
12 arrested. He was part of this kidnapping, if
13 you want to call it that.

14 Please, you're making your argument.
15 I'm denying it.

16 MR. SCHECTER: Your Honor, there is
17 also -- what the testimony said was that Qin
18 Zheng held a gun to his head and threatened
19 to kill him if he didn't make the phone call.

20 THE COURT: I don't recall any such
21 testimony.

22 MR. SCHECTER: Well, your Honor, I would
23 ask between --

24 THE COURT: There is no such testimony
25 in this case. And you know it and I know it.

1

Proceedings

1000

2

MR. SCHECTER: Well, your Honor, I
remember there being testimony from a
question --

3

4

5

THE COURT: That man never held a gun to
his head. He never testified he held a gun
to his head.

6

7

8

MR. SCHECTER: I remember there being
testimony --

9

10

THE COURT: Your application to that is
denied. Anything else?

11

12

MR. SCHECTER: No, your Honor.

13

14

THE COURT: Is there any other
application?

15

16

MR. KESSLER: No, your Honor. The only
thing I would ask is -- I have read it again.

17

18

I have also gone over the regular charges
with your law secretary and I have no

19

20

objection to the charges that are being
submitted. I have also gone over the verdict

21

22

sheet. That's fine as well. I have been
handed a copy of the confessions and

23

admissions charge.

24

25

Mr. Schecter asked for a specific charge
regarding deception or trickery. I have no

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

1001

objection to your law secretary adding that to the charge. The only addition I would ask to the charge is just in terms of form. In your Honor's instruction, in the beginning of the instruction you instruct the jury that statement has to be voluntary and truthful, and later on it talks in your charge the statement has to be in whole or in part truthful. So all I would ask is when you use the words in the beginning of the statement whether a statement was voluntarily made and whether a statement is in whole or in part truthful, be consistent throughout the entire charge.

THE COURT: All right. I will consider that.

MR. KESSLER: That's the only addition or exception to your Honor's charge.

THE COURT: Any other requests?

MR. KESSLER: I have no other requests to charge.

THE COURT: So the charge, except with that one request I'm going to consider, is acceptable?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

1002

MR. KESSLER: Yes.

THE COURT: Except for the duress charge. You have a continuing exception to my denial.

MR. SCHECTER: Yes.

THE COURT: We are ready to have summation and charge Monday morning; is that correct?

MR. KESSLER: That's correct.

THE COURT: Have you seen the verdict sheet?

MR. KESSLER: I have.

THE COURT: Is that acceptable to both of you?

MR. KESSLER: Yes.

THE CLERK: Mr. Schechter, you have seen the verdict sheet?

MR. SCHECTER: Yes.

THE COURT: Okay. Monday morning, 9:30 for summation and charge. Same bail conditions.

* * * * *

1003

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-25

THE PEOPLE OF THE STATE OF NEW YORK Indictment
No. 3282-95

-against-

KIDNAP1

HAI GUANG ZHENG,

Trial

Defendant.

July 8, 1996
125-01 Queens Boulevard
Kew Gardens, NY 11415

B E F O R E:

HONORABLE STANLEY B. KATZ,

Justice, and a jury

A P P E A R A N C E S:

(Same appearances as previously noted.)

DEBRA DUNN
Official Court Reporter

THE CLERK: Case on trial. Calendar 3282 of '95, People -v- Hai Guang Zheng. The defendant is present along with the official Mandarin interpreter, Li Wan, his counsel, Donald Schecter, and Scott Kessler, A.D.A. The sworn jurors are in the jury room.

THE COURT: Counsel, are you ready for summations?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 1004

MR. SCHECTER: Can I have one moment
with my client? He was just brought up. I
didn't --

THE COURT: Yes.

(Pause in the proceedings.)

MR. SCHECTER: Okay.

THE COURT: Ready to proceed?

MR. SCHECTER: Yes.

THE COURT: Is there any unfinished
business before you sum up? You're going to
marshal the evidence -- you want me to
marshal the evidence; is that correct?

MR. SCHECTER: Correct.

THE COURT: You read the verdict sheet.
That's acceptable.

(The jury entered the courtroom.)

THE CLERK: Counsel, you waive the
formal reading of the roll?

MR. KESSLER: So waived.

MR. SCHECTER: So waived.

THE CLERK: Let the record reflect 12
sworn jurors, four alternates, now in the
jury box.

THE COURT: Good morning, ladies and

Summation - Defendant

1005

gentlemen. I hope you had a nice weekend. You have heard all the testimony in the case. Now we are going to hear the summations of counsel. After that I will instruct you as to the law. Then you will retire for your deliberations.

Counsel.

MR. SCHECTER: Good morning, Justice Katz, Mr. Kessler, Mr. Zheng, ladies and gentlemen. First let me say I hope everyone had a very pleasant 4th of July holiday. Now that it's over, it's our time to get down to the work at hand.

We are first at that stage of the trial known as summations. First, remember what I say now or Mr. Kessler says is not evidence. The only evidence that you heard will come from that witness stand. This will be my last opportunity to speak to you and ask you to make certain conclusions based on the evidence that you have heard before you. I will also ask you to draw certain inferences and conclusions from that evidence in this case, or the lack of evidence from this case,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Summation - Defendant

1006

based on sloppy police work and insufficient testimony and insufficient medical evidence and research.

There is no greater duty in our law than that as jurors. If you were a defendant in a criminal case, a trial by your peers is considered one of the great safeguards of our constitution. I ask each of you to take your job very seriously when you're in that jury room deliberating the fate of my client.

The burden of this case is on the People, the District Attorney, Mr. Kessler, and Zheng Hai Guang is presumed innocent. Under our constitution there isn't a greater presumption than the presumption of innocence. The People must prove him guilty beyond a reasonable doubt.

Before you can convict someone of any crime, you must be convinced beyond a reasonable doubt as to each element contained in that count of the indictment. Even if you have a reasonable doubt as to one of those elements, even if there are 6 of 7 or 8 elements, if you have a doubt as to one of

Summation - Defendant

1007

1
2 those elements, your verdict must be not
3 guilty.

4 Now, we just said that the burden is on
5 the People to prove Mr. Zheng guilty. Now,
6 who are the People? You and I are the
7 people. Everyone in this courtroom is the
8 people. And my client Zheng Hai Guang is
9 also one of the people that we are talking
10 about. By his plea of not guilty Mr. Zheng
11 has told you that, I did not commit these
12 crimes. I am innocent of these crimes. And
13 Mr. District Attorney, the burden is on you
14 at this stage to prove me guilty beyond a
15 reasonable doubt.

16 In this trial the burden is on
17 Mr. Kessler. And we, the defense, don't have
18 any burden whatsoever. We don't have to do
19 anything. We don't have to call any
20 witnesses. But Zheng Hai Guang went one step
21 further in this trial. He testified before
22 you and you had an opportunity to look at
23 him, hear him testify, and make a decision
24 based on his credibility. He told you why
25 things occurred and his reasons for the

Summation - Defendant

1008

events that occurred and what occurred.

And I submit to you, ladies and gentlemen of the jury, when you're in the jury room and you're considering all of the evidence, you will see that the District Attorney has failed to sustain his burden and your vote must be not guilty.

The first point that I would like to bring up to you, when we are considering the evidence, is that Zheng Hai Guang was not born in this country. He was brought here for the sum of \$30,000, a very huge amount of money. And let's remember also the customs and traditions in other country are not the same as they are in the United States. The \$30,000 was a great deal of money. And he was brought here by Ak Guan. And because he didn't have the entire amount, he was forced to do whatever Ak Guan wanted him to do. And his very existence in this country and the existence of his parents in China was up to what Ak Guan wanted Zheng Hai Guang to do. If he did not listen to him and do what Ak Guan wanted him to do, my client and his

Summation - Defendant

1009

1 family would be killed, and he testified to
2 that on the witness stand.

3 While this may not be normal to us in
4 this country, but let's not be naive. And we
5 know that other practices occur in other
6 countries that are not familiar to us here.
7 And these customs then carry over when the
8 people come to this country.

9 I submit to you, members of the jury,
10 that Zheng Hai Guang was very fearful for his
11 life and the life of his parents. If he did
12 not do the things that Ak Guan made him do
13 here, he would not be here today. And who
14 knows whether his parents would still be
15 living in China.

16 And I ask you, when you're in the jury
17 room, consider his intent and see whether his
18 intent was to do a kidnapping for ransom, or
19 was his intent to save his own life and the
20 life of his parents. That is what you have
21 to consider when you're in the jury room.

22 The first thing I would like to talk to
23 you -- the next thing I would like to talk to
24 you about is the alleged statement that my
25

Summation - Defendant

1010

1 client made. You will see that there is a
2 three-page statement that my client allegedly
3 made while speaking to Detective Ng. And not
4 only that, my client signed -- signs the
5 statement Detective Ng testified to and
6 initials any changes.
7

8 This is wonderful, your Honor, members
9 of the jury. But let's remember something.
10 My client does not speak, read, or write
11 English. But Detective Ng made sure the
12 statement appears plausible. He has him sign
13 it. He doesn't know what is in there. He
14 cannot read the statement. He initials
15 changes. He doesn't know what is happening.

16 But if one asked, well, then if he
17 doesn't know what it said, why did he do
18 this? Remember what he testified to on the
19 witness stand. He testified that he was
20 beaten; he was hit and beaten. And that is
21 why he did what the police wanted him to do
22 by signing the statement, even if he didn't
23 know what it said.

24 He even said he did not make the
25 statement, but to protect himself he did what

Summation - Defendant

1011

1 they want because he was fearful of his life.
2 And when you're evaluating and considering
3 this statement, consider the threats and the
4 force that was used against him. Remember
5 "the insult" that he said that occurred on
6 him when Detective Ng said, you raped the
7 females? He said there wasn't a greater
8 insult to him than that insult.
9

10 Now, Detective Ng stated that these were
11 Mr. Zheng's exact words, and that he wrote it
12 down. And the only changes he made is if
13 Zheng Hai Guang did not speak grammatically
14 correct, he changed the grammar, crossed it
15 out, and had my client correct it and
16 initial. And I submit to you, don't worry so
17 much about the grammar. Worry about the more
18 important thing. Be a detective.

19 My client mentioned Ak Guan, who was the
20 ringleader of it and was the one who made --
21 forced him to do that. Detective Ng, instead
22 of worrying about the grammar, what he should
23 be doing is trying to find out who Ak Guan
24 is, where he lives, where he hangs out, so he
25 can arrest him and get the true culprit of

Summation - Defendant

1012

these crimes.

Next, Mr. Kessler may say he wasn't beaten. He will bring out pictures of my client. Remember those pictures were taken during the lineup. The statement was made allegedly over two hours after the lineup. So those pictures will not show when the beating occurred. My client testified that the beatings occurred after the lineup, not before. I ask you consider that when you are evaluating all the testimony that was produced during this trial.

It's very smart of the police officer to wait till after pictures are taken to coerce, force, and hit my client, because that way they can say, look at the pictures. I don't see anything on the pictures that would show he was beat up. But members of the jury, consider when those pictures were taken and when the beatings occurred.

Zheng Hai Guang also told you that he did not make this statement. He started to tell Detective Ng what occurred, but then that was not what Detective Ng wanted to

Summation - Defendant

1013

1
2 hear, because it was different than the
3 information he had.

4 Detective Ng testified that he had
5 spoken to one of the males, so he knew what
6 happened. He had spoken to the females. The
7 females had been spoken to a few hours
8 previously, so he knew what they were saying.
9 And he wanted to put in this statement
10 something to corroborate what they said
11 occurred. And if my client wasn't going to
12 tell him exactly what he wanted to hear, he
13 was going to write down whatever he wanted.
14 There would be no way for my client to read
15 this and say, this isn't what happened. This
16 isn't what I said, cause he can't read this.
17 So he didn't know what is said, what is in
18 the statement.

19 But Detective Ng still had him sign it.
20 I say this statement is not worth the paper
21 it is written on. It is much easier just to
22 write down what you want to write down and
23 then come in here and testify to it, then
24 listening and trying to piece together what
25 happened based on the actual facts. Find out

Summation - Defendant

1014

1
2 where Ak Guan is, who had terrorized my
3 client, and Zheng Qin.

4 Now, Detective Ng also stated that he
5 wrote down everything that my client said.

6 But ladies and gentlemen, he didn't.

7 Remember he was asked, did you ask him about
8 the rapes? Yes. And what did Zheng Hai

9 Guang tell you about the rapes. He said, you
10 insulted me. I never raped anyone. But

11 nowhere in this statement, unfortunately, is
12 the word rape ever used. And nowhere is

13 there in this statement that Zheng Hai Guang

14 denied ever raping the women and specifically
15 told him. If Detective Ng wants to appear so

16 unbiased and unprejudiced and do what he is

17 supposed to do, then that statement -- he

18 would have written these statements in this

19 statement. But he did not. Consider that

20 when evaluating his testimony and the use of
21 this statement.

22 The statement he said started at 6:15

23 and ended at 7:20. He was in for over an

24 hour with my client, where my client

25 allegedly spoke to him. And thereafter he

Summation - Defendant

1015

1 wrote down the statement. If he is a good
2 detective, what he is going to be pressing
3 during that time is not what my client tells
4 him happened or didn't happen. The females
5 were there and everyone else there was there.
6

7 What he would be doing is pressing him
8 where Ak Guan is, where is the culprit in the
9 crime? Where does he live? How do you get
10 in touch with you -- how does he get in touch
11 with you? Do you have a phone or beeper
12 number? Where do you meet him? Where does
13 he hang out? But Detective Ng never did any
14 of that. Nowhere in this statement is it
15 ever said, I attempted to find out where Ak
16 Guan hung out or where he is or anything
17 else. Detective Ng was completely deficient
18 in his job as a police officer, and I ask you
19 to consider that when evaluating this case.

20 The next thing I would like to go over
21 with you is police officers and their work
22 and what they're supposed to do. Police
23 officers are trained. They have a lot of
24 training at the police academy. And they
25 know that when an incident occurs, the

1 Summation - Defendant 1016

2 incident is going to go to trial many, many
3 months later. In this case, this incident
4 happened in the first week of April. We are
5 now in July over a year later, in fact 15
6 months later. And what are police officers
7 trained to do most? Paperwork.

8 Remember Detective Greene came in here
9 with three big files, you know, with numerous
10 paperwork. He was coordinator of this job.
11 Police officers know that nothing is more
12 important for them to do at the time an
13 incident is unfolding and right afterward but
14 to do their paperwork and get their paperwork
15 correct.

16 Ladies and gentlemen, I submit to you,
17 try to remember something that happened last
18 April and see how much memory you have of
19 exact details. This incident occurred 15
20 months ago. And as such, you're not going to
21 remember many things about something.
22 Especially Detective Greene, who since that
23 time has made many other arrests and been
24 involved in many other cases. He's not going
25 to remember when anyone told him. The way he

Summation - Defendant

1017

would do that is to do the paperwork and do the paperwork properly.

He said he spoke to both females. And what was he doing while he spoke to both females, he was taking handwritten notes of exactly what they said. And what happened to those handwritten notes, ladies and gentlemen? Do you think he is going to remember what they said if he doesn't have his handwritten notes and the other typed notes? Why, the only thing that he would have to remember what occurred, what they told him, would be these notes. And they would be detailed in the paperwork, especially the handwritten notes which were taken right then and there as he is speaking to the females.

Now, he will tell you he didn't know what happened to them or they're lost. And I submit to you that meanwhile he was taking those notes. And afterwards, when he was comparing everything to what occurred, and as things happened, that this paperwork and those notes were not beneficial to what he

Summation - Defendant

1018

1
2 wanted you people to hear. And what was told
3 would be beneficial to my client, Zheng Hai
4 Guang. Then the people were corroborating,
5 the two females were corroborating what these
6 two people were saying. That's why --

7 MR. KESSLER: I object. This is beyond
8 speculation now.

9 THE COURT: Sustained. Stick to the
10 evidence.

11 MR. SCHECTER: Well, I am, your Honor,
12 and I'm submitting to them the reason that
13 they are not here is because they would be
14 beneficial to my client. And I ask you
15 consider that when you're evaluating his
16 testimony and when you're in the jury room.

17 I submit to you also that he lost -- he
18 said he typed up a three-page report of one
19 of the females. And that third page, once
20 again, is not around. Once again, if that
21 report is beneficial to my client and is not
22 beneficial to the People, where is that
23 report? And I submit to you the reason it is
24 not here is once again the information on
25 page 3 of that report is beneficial to my

Summation - Defendant

1019

1
2 client. And that's the reason why we do not
3 have it here.

4 And I submit to you to consider that
5 when you're in the jury room evaluating his
6 testimony. Why does he lose the reports of
7 the two females, the two people who can
8 really say what happened, not all the other
9 people who are tangentially involved in this
10 incident?

11 When you're in the jury room, ladies and
12 gentlemen, look at Detective Greene's
13 motivation for keeping these pages away from
14 you; why he did that, and where they are.
15 Don't let him and don't let the police
16 department get away with sloppy police work.
17 If someone you knew was sitting as a
18 defendant on trial, would you want vital
19 police records and reports to be lost? How
20 would you deal with it? And that's what I'm
21 asking you to do when you're in the jury room
22 when you're looking at it and evaluating the
23 testimony of the two females. ✓

24 Let's start with what we do know.

25 Detective Banks testified that one gun was